6-23-88
Vol. 53 No. 121
Pages 23603-23748

Federal Register

Thursday
June 23, 1988

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months in paper form, or $188.00 per year, or $94.00 for six months in microfiche form, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 53, No. 121

Thursday, June 23, 1988

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
271 23638
273 23638

8 CFR
100 23603
337 23603
341 23603

14 CFR
71 (5 documents) 23603–23606
Proposed Rules:
39 (2 documents) 23642, 23643
71 23644

15 CFR
374 23607

17 CFR
Proposed Rules:
240 23645

21 CFR
522 23607

22 CFR
94 23608
Proposed Rules:
9b 23656

24 CFR
3280 23610

26 CFR
1 23611
301 23611
602 23611
Proposed Rules:
1 (2 documents) 23658, 23659
301 23659
602 23659

28 CFR
20 23619

30 CFR
Proposed Rules:
906 23660

31 CFR
565 23620

33 CFR
117 23621
165 23622

34 CFR
Proposed Rules:
642 23724

37 CFR
1 23728
5 23728

40 CFR
52 (6 documents) 23623–23628
Proposed Rules:
261 23661

43 CFR
Proposed Rules:
3830 23720
3850 23720
3860 23720

44 CFR
61 23629

46 CFR
550 23632
580 23632

47 CFR
73 (5 documents) 23632–23634
Proposed Rules:
73 (3 documents) 23672

49 CFR
Proposed Rules:
571 23673

50 CFR
17 (3 documents) 23740–23745
650 23634
Proposed Rules:
17 23674

Rules and Regulations

Federal Register
Vol. 53, No. 121
Thursday, June 23, 1988

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100, 337, and 341

[INS Number: 1048-88]

Statement of Organization, Field Offices; Oath of Allegiance; Certificates of Citizenship

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final regulation revises 8 CFR 100.4 by adding the county of Bell under the jurisdiction of the San Antonio District Office under § 100.4(b)(14), and by adding Mayaguez, Puerto Rico as Sector Number 3 under § 100.4(d). Further, this rule amends 8 CFR by removing a reference to repealed section 323 of the INA which appears at 8 CFR Part 337 and by amending 8 CFR Part 341 to be consistent with the INA. This regulation updates the current organization as it pertains to the Immigration and Naturalization Service.

EFFECTIVE DATE: June 23, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond R. Jaroneski, Jr., Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Rm. 7215, Washington, DC 20536, Telephone: (202) 633-5014.

SUPPLEMENTARY INFORMATION: The promulgation of this rule is to correct the text of the regulations by: (1) in § 100.4(b)(14) adding the list of counties under the jurisdiction of the San Antonio District Office the county of Bell; (2) in § 100.4(d) adding as Sector No. 3, Mayaguez, Puerto Rico; (3) in Part 337 removing reference to a statutory section that was repealed by section 7 of the Act of October 5, 1978; and (4) in Part 341 eliminating the confusion between the meaning of the terms "officer" and "member" of the Service by amending the regulation to be consistent with the reading of the statute.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule is not a major rule as defined in E.O. 12291, nor is it expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects

8 CFR Part 100

Immigration, International boundaries, Districts, Border sectors, Administrative practice and procedures, Authority delegations.

8 CFR Part 337

Citizenship and naturalization, Waiver of oath.

8 CFR Part 341

Certificate of citizenship.

For the reasons set out in the preamble, Chapter I of Title 8 of the Code of Federal Regulations, is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for Part 100 is revised to read as follows:

Authority: 66 Stat. 173; 8 U.S.C. 1103.

§ 100.4 [Amended]

2. Section 100.4(b)(14) is amended by adding to the list of counties "Bell" between "Bee" and "Bexar" counties.

3. Section 100.4(d) is amended by adding Sector No. 3 to read as follows:

(d) *Border Patrol Sectors.* * * *

Sector No. 3—Mayaguez, Puerto Rico

* * * * *

PART 337—OATH OF ALLEGIANCE

4. The authority citation for Part 337 is revised to read as follows:

Authority: 66 Stat. 173, 246, 252, 258; 8 U.S.C. 1103, 1433, 1443, 1448.

5. Section 337.2 is revised to read as follows:

§ 337.2 Persons naturalized by judicial action; effective date.

Any person who was or shall hereafter be admitted to citizenship by the written order of a naturalization court, shall be deemed to be a citizen of the United States as of the date of taking the prescribed oath of allegiance. When a waiver of such oath is granted by the court in the case of a child naturalized under section 322 of the Immigration and Nationality Act, the child shall become a citizen of the United States as of the date of such waiver.

PART 341—CERTIFICATES OF CITIZENSHIP

6. The authority citation for Part 341 is revised to read as follows:

Authority: 66 Stat. 173, 238, 254, 264, as amended; 8 U.S.C. 1103, 1409(c), 1443, 1444, 1448, 1452, 1455.

7. Section 341.7 is revised to read as follows:

§ 341.7 Issuance of certificate.

If the application is granted, a Certificate of Citizenship shall be issued and, unless the claimant is unable by reason of mental incapacity or young age to understand the meaning thereof, he or she shall take and subscribe to the oath of renunciation and allegiance, prescribed by Part 337 of this chapter, before a member of the Service within the United States. Thereafter, delivery of the certificate shall be made in the United States to the claimant or the acting parent or guardian, either personally or by certified mail.

Dated: March 28, 1988.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 88-14104 Filed 6-22-88; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWP-4]

Revision to Santa Barbara, CA; Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the Santa Barbara Municipal Airport control zone from a full time to a part time control zone. The Santa Barbara Flight Service Station is in operation from 0530 to 2400 hours local time, daily and is responsible for providing weather reporting service at the Santa Barbara Municipal Airport. One of the requirements to have a control zone is that hourly and special weather observations must be taken at the airport upon which the control zone is designated. This action will change the control zone hours to match the hours that weather reporting services are available at the Santa Barbara Municipal Airport.

EFFECTIVE DATE: 0901 u.t.c., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1642.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the description of the Santa Barbara Municipal Airport control zone and changes it from a full time to a part time control zone. Weather reporting services at the Santa Barbara Municipal Airport are available only from 0530 to 1400 hours local time daily. One of the requirements to have a control zone is that hourly and special weather observations must be taken at the airport upon which the control zone is designated. This action will change the control zone hours to match the hours that weather reporting services are available at the Santa Barbara Municipal Airport. Changes to the control zone hours will be established in advance by a Notice to Airmen which will thereafter be continuously published in the Airport/Facility Directory. I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

Santa Barbara Municipal Airport, CA [Revised]

Within a 5-mile radius of Santa Barbara Municipal Airport (lat. 34°25'34" N., long. 119°50'22" W.); within 2 miles each side of the Santa Barbara ILS localizer west course, extending from the 5-mile radius zone to a point at lat. 34°25'31" N., long. 119°57'28" W. This control zone is effective from 0530 to 2400 hours local time, daily or during specific dates and times established in advance by a Notice to Airmen which thereafter will be continuously published in the *Airport/Facility Directory.*

Issued in Los Angeles, California on June 6, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-14164 Filed 6-22-88; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 88-AWP-7]

Amendment to Bakersfield, CA, Control Zone and San Rafael, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Bakersfield, CA, control zone description to update the Meadows Field, CA, Airport Reference Point (ARP). This action also amends the San Rafael, CA, transition area description to change the name of Hamilton AFB to Hamilton AAF and update the ARP.

EFFECTIVE DATE: 0901 u.t.c., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1642.

The Rule

These amendments to Part 71 of the Federal Aviation Regulations amend the description of the Bakersfield, CA, control zone to update the Meadows Field, CA, ARP and amend the description of the San Rafael, CA, transition area to change the name of Hamilton AFB to Hamilton AAF and update the ARP. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because these are minor amendments in which the public would not be particularly interested. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal

Aviation Regulations (14 CFR Part 71), is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983; 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Bakersfield, CA [Amended]

By removing "Meadows Field, Bakersfield, CA, (lat. 35°25'0540" N., long. 119°03'05" W.)" and substituting "Meadows Field, Bakersfield, CA, (lat. 35°26'01" N., long. 119°03'21" W.)"

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

San Rafael, CA [Amended]

By removing "Hamilton AFB (lat. 38°03'35" N., long. 122°30'35" W.)" and substituting "Hamilton AAF (lat. 38°03'35" N., long. 122°30'30" W.)".

Issued in Los Angeles, California, on June 6, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-14165 Filed 6-22-88; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 88-AWP-6]

Revision to Fallon, NV; Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This airspace action revises the description of the Fallon, NV, transition area to replace information in the description as follows:

1. Remove all references to Reno VORTAC (VHF Omni-directional Range/Tactical Air Navigation) and substitute Mustang VORTAC. The Reno VORTAC was renamed Mustang VORTAC.

2. Remove all references to alternate airway V-105E and substitute V-564. Alternate airway V-105E was renumbered to V-564.

3. Remove that portion of the description which excludes airspace in R-4816S, Dixie Valley, NV, overlying the VFR corridor along U.S. Highway 50. R-4816S and the VFR corridor have been realigned and this exclusion is no longer necessary.

EFFECTIVE DATE: 0901 u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1642.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to revise the description of the Fallon, NV, transition area. This revision removes all references to Reno VORTAC and V-105E and substitutes their new designations. This revision also removes any reference to airspace in R-4816S overlying the VFR corridor along U.S. Highway 50. R-4816S and the VFR corridor have been realigned. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.181 was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983; 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Fallon, NV [Revised]

That airspace extending upward from 700 feet above the surface within an 11-mile radius of NAS Fallon TACAN and within 2 miles NE and 2.5 miles SW of the Fallon TACAN 296° radial, extending from the 11-mile radius area to 15 miles NW of the TACAN; that airspace extending upward from 1,200 feet above the surface beginning at lat. 40°01'00" N., long. 118°01'00" W.; to lat. 39°51'00" N., long. 117°58'00" W.; to lat. 39°51'00" N., long. 117°31'00" W., to lat. 39°34'00" N., long. 117°39'30" W.; to lat. 39°18'00" N., long. 117°47'30" W.; to lat. 39°00'0" N., long. 117°40'00" W.; to the point of intersection of a line 8 miles NE of and parallel to the Mustang VORTAC 135° radial and the NE edge of V-564; thence via a line 8 miles NE of and parallel to the Mustang 135° radial to long. 119°00'00" W.; to lat. 39°42'00" N., long. 119°00'00" W.; to lat. 40°01'00" N., long. 118°19'00" W.; to the point of beginning, excluding that airspace below 1,500 feet AGL within R-4816N; that airspace extending upward from 9,500 feet MSL extending from 23 to 44 miles SE of Fallon TACAN bounded on the NE by a line 10 miles NE of and parallel to the Fallon 139° radial and on the Sw by the NE edge of V-564. The 1,200 portion underlying the 9,500 foot MSL portion of the transition area is excluded.

Issued in Los Angeles, California, on June 6, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-14166 Filed 6-22-88; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 88-ACE-03]

Alteration of Transition Area; Kansas City, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to alter the 700-foot transition area at Kansas City, Missouri, to provide additional controlled airspace for aircraft executing a new approach procedure to the Kansas City, Missouri,

Downtown Airport, utilizing the Runway 3 localizer. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR), and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: 0901 u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, the Kansas City Downtown Airport is being provided with localizer approach capability to Runway 3. The establishment of this instrument approach procedure, based on this localizer, entails alteration of the transition area of Kansas City, Missouri, at or above 700 feet above the ground, within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR), and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

Discussion of Comments

On page 8929 of the **Federal Register** dated March 18, 1988 (53 FR 8929), the FAA published a notice of proposed rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Kansas City, Missouri. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the notice of proposed rulemaking.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it in certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—FEDERAL AVIATION REGULATIONS

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Kansas City, Missouri [Revised]

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Kansas City Downtown Airport (lat. 39°07'20.7"N., long. 94°35'30"W.) within 4.5 miles each side of the Riverside VOR 202° radial extending from the 10-mile radius area to 14.5 miles southwest of the Downtown Airport, within a 6.5-mile radius of the Sherman AAF (lat. 39°22'15"N., long. 94°54'45"W.) within an 8.5-mile radius of the Kansas City International Airport (lat. 39°17'50"N., long. 94°42'54.6"W.) within 5 miles each side of the Runway 19 ILS localizer north course extending from the 8.5-mile radius area to 25 miles north of the Dotte LOM, within 5 miles each side of the Kansas City VORTAC 096° radial extending from the 8.5-mile radius area to 11.5 miles each side of the VORTAC, and within 5 miles each side of the Runway 1 ILS localizer south course extending from the 8.5-mile radius area to 11 miles south of the Dotte LOM.

This amendment becomes effective at 0901 u.t.c., October 20, 1988.

Issued in Kansas City, Missouri, on May 31, 1988.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 88-14167 Filed 6-22-88; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 88-ASO-2]

Designation of Transition Area; Keystone Heights, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Keystone Heights, Florida, Transition Area to accommodate Instrument Flight Rule (IFR) operations at the Keystone Airpark Airport. This action lowers the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An Instrument Approach Procedure has been developed to serve the airport and the controlled airspace is required for protection of IFR operations.

EFFECTIVE DATE: 0901 u.t.c., September 22, 1988.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On March 24, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Keystone Heights, Florida, Transition Area (53 FR 8635). This action will provide additional controlled airspace in the vicinity of the Keystone Airpark Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Keystone Heights, Florida, Transition Area and lowers the base of controlled airspace in the vicinity of the Keystone Airpark Airport from 1,200 feet to 700 feet above the surface.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTSs

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Keystone Heights, Florida [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Keystone Airpark Airport (Lat. 29°50'39" N. Long. 82°03'01" W.), excluding that airspace that coincides with Restricted Area R-2903B.

Issued in East Point, Georgia, on June 2, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88-14168 Filed 6-22-88; 8:45 a.m.]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 374

[Docket No. 80593-8093]

General License GUS; Permissive Reexports

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is adding General License GUS to the other General Licenses specified in § 374.2(a)(1), under which reexports of U.S.-origin commodities may be made without obtaining prior written authorization from the Office of Export Licensing. A commodity that may be exported under the provisions of General License GUS (§ 371.13) may be permissively reexported to a new country of destination as long as the direct export would be authorized from the United States to that new country(ies) under the provisions of General License GUS.

EFFECTIVE DATE: June 23, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign affairs and military function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 374

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulation (15 CFR Part 374) is amended as follows:

PART 374—[AMENDED]

1. The authority citation for 15 CFR Part 374 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. Paragraph (a)(1) of § 374.2 is revised to read as follows:

§ 374.2 Permissive reexports.

* * * * *

(a) * * *

(1) May be exported directly from the United States to the new country of destination under General License G-DEST, GTE, G-COM, GFW, G-CEU, GCG, G-NNR, G-FTZ, GUS or BAGGAGE;

* * * * *

Dated: June 20, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-14125 Filed 6-22-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs not Subject to Certification; Xylazine Hydrochloride Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Vet-A-Mix, Inc., providing the use of xylazine hydrochloride injection as a sedative and analgesic in horses.

EFFECTIVE DATE: June 23, 1988.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Vet-A-Mix, Inc., 604 West Thomas Ave., P.O. Box A, Shenandoah, IA 51601, filed NADA 139–236 which provides for use of a xylazine hydrochloride injection (AnaSed™) containing 100 milligrams of xylazine base per milliliter. The drug is for intravenous or intramuscular use by or on the order of a licensed veterinarian as a sedative and analgesic in horses. The NADA is approved and 21 CFR 522.2662(b) is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 [21 CFR Part 20) and § 514.11[e][2][ii] [21 CFR 514.11[e][2][ii]), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24[d][1][i] that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 522.2662 is amended by revising paragraph (b) to read as follows:

§ 522.2662 Xylazine hydrochloride injection.

* * * * *

(b) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter for use in horses, wild deer, elk, dogs, and cats. See Nos. 013983 and 032998 in § 510.600(c) of this chapter for use in horses only.

* * * * *

Dated: June 16, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–14189 Filed 6–22–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 94

[108.870]

International Child Abduction

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule adds a Part 94 to 22 CFR for the purpose of setting forth the functions of the U.S. "Central Authority" under the 1980 Hague Convention between the United States and other countries on the Civil Aspects of International Child Abduction. The functions of a "Central Authority" are enumerated in the Convention and further defined in federal implementing legislation. The purpose of this regulation is to explain in non-technical terms how the U.S. "Central Authority" will function.

DATES: Interim rule effective July 1, 1988; comments must be received on or before July 25, 1988.

ADDRESSES: Comments should be sent to Director, Office of Citizens Consular Services, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Mr. Carmen A. DiPlacido, Director, Office of Citizens Consular Services, 202–647–3666.

SUPPLEMENTARY INFORMATION: The International Child Abduction Remedies Act, Pub. L. 100–300, was enacted to make possible the full and uniform implementation of the Hague Convention on the Civil Aspects of International Child Abduction. The Convention and a legal analysis are reprinted as Appendices B and C to a Department of State notice in the **Federal Register** of March 26, 1986 at page 10498. The Act was signed by the President on April 29, 1988 and on that same day the United States deposited its instrument of ratification of the Convention. The Convention will enter into force for the United States on July 1, 1988. The Act specifies that the President shall designate a federal agency to serve as the Central Authority for the United States under the Convention and that the functions of the U.S. Central Authority are those imposed upon the Central Authority by the Act and the Convention. The Department of State is publishing this interim rule now in anticipation of its designation as the U.S. Central Authority in order to provide an opportunity for comment prior to the entry into force of the Convention.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, and, for the purposes of certification required by the Regulatory Flexibility Act, will not have an impact on small business entities. The collection of information requirements contained in the rule have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments in this regard should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of State.

List of Subjects in 22 CFR Part 94

International Child Abduction.

For the reasons set forth in the preamble, Part 94 is added to read as follows:

PART 94—INTERNATIONAL CHILD ABDUCTION

Sec.

Authority: Hague Convention on the Civil Aspects of International Child Abduction; the federal "International Child Abduction Remedies Act," Pub. L. 100–300.

§ 94.1 Definitions.

For purposes of this part—

(a) "Convention" means the Hague Convention on the Civil Aspects of International Child Abduction, Appendix B to Department of State notice, 51 FR 10498, March 26, 1986.

(b) "Contracting State" means any country which is a party to the Convention.

(c) "Child" and "children" mean persons under the age of sixteen.

§ 94.2 Designation of Central Authority.

The Office of Citizens Consular Services in the Bureau of Consular Affairs is designated as the U.S. Central Authority to discharge the duties which

are imposed by the Convention and the International Child Abduction Remedies Act upon such authorities.

§ 94.3 Functions of the Central Authority.

The U.S. Central Authority shall cooperate with the Central Authorities of other countries party to the Convention and promote cooperation by appropriate U.S. state authorities to secure the prompt location and return of children wrongfully removed to or retained in any Contracting State, to ensure that rights of custody and access under the laws of one Contracting State are effectively respected in the other Contracting States, and to achieve the other objects of the Convention. In performing its functions, the U.S. Central Authority may receive from, or transmit to, any department, agency, or instrumentality of the federal government, or of any state or foreign government, information necessary to locate a child or for the purpose of otherwise implementing the Convention with respect to a child.

§ 94.4 Prohibitions.

(a) The U.S. Central Authority is prohibited from acting as an agent or attorney or in any fiduciary capacity in legal proceedings arising under the Convention. The U.S. Central Authority is not responsible for the costs of any legal representation or legal proceedings nor for any transportation expenses of the child or applicant. However, the U.S. Central Authority may not impose any fee in relation to the administrative processing of applications submitted under the Convention.

(b) The U.S. Central Authority shall not be a repository of foreign or U.S. laws.

§ 94.5 Application.

Any person, institution, or other body may apply to the U.S. Central Authority for assistance in locating a child, securing access to a child, or obtaining the return of a child that has been removed or retained in breach of custody rights. The application shall be made in the form prescribed by the U.S. Central Authority and shall contain such information as the U.S. Central Authority deems necessary for the purposes of locating the child and otherwise implementing the Convention. The application and any accompanying documents should be submitted in duplicate in English or with English translations. If intended for use in a foreign country, two additional copies should be provided in the language of the foreign country.

§ 94.6 Procedures for children abducted to the United States.

Upon receipt of an application requesting access to a child or return of a child abducted from a country party to the Convention and taken to the United States, the U.S. Central Authority shall—

(a) Confirm the child's location or, where necessary, seek to ascertain its location;

(b) Seek to ascertain the child's welfare through inquiry to the appropriate state social service agencies and, when necessary, consult with those agencies about the possible need for provisional arrangements to protect the child or to prevent the child's removal from the jurisdiction of the state;

(c) Seek through appropriate authorities (such as state social service agencies or state attorneys general or prosecuting attorneys), where appropriate, to achieve a voluntary agreement for suitable visitation rights by the applicant or for return of the child;

(d) Assist applicants in securing information useful for choosing or obtaining legal representation, for example, by providing a directory of lawyer referral services, or pro bono listing published by legal professional organizations, or the name and address of the state attorney general or prosecuting attorney who has expressed a willingness to represent parents in this type of case and who is employed under state law to intervene on the applicant's behalf;

(e) Upon request, seek from foreign Central Authorities information relating to the social background of the child;

(f) Upon request, seek from foreign Central Authorities information regarding the laws of the country of the child's habitual residence;

(g) Upon request, seek from foreign Central Authorities a statement as to the wrongfulness of the taking of the child under the laws of the country of the child's habitual residence;

(h) Upon request, seek a report on the status of court action when no decision has been reached by the end of six weeks;

(i) Consult with appropriate agencies (such as state social service departments, the U.S. Department of Health and Human Services, state attorneys general) about possible arrangements for temporary foster care and/or return travel for the child from the United States;

(j) Monitor all cases in which assistance has been sought and maintain records on the procedures followed in each case and its disposition;

(k) Inform other Central Authorities as appropriate on the operation of the Convention; and

(l) Perform such additional functions as the Assistant Secretary of State for Consular Affairs may from time to time direct.

§ 94.7 Procedures for children abducted from the United States.

Upon receipt of an application requesting access to a child or return of a child abducted from the United States and taken to another country party to the Convention, the U.S. Central Authority shall—

(a) Review and forward the application to the Central Authority of the country where the child is believed located or provide the applicant with the necessary form, instructions, and the name and address of the appropriate Central Authority for transmittal of the application directly by the applicant;

(b) Upon request, transmit to the foreign Central Authority requests for a report on the status of any court action when no decision has been reached by the end of six weeks;

(c) Upon request, facilitate efforts to obtain from appropriate U.S. state authorities and transmit to the foreign Central Authority information regarding the laws of the child's state of habitual residence;

(d) Upon request, facilitate efforts to obtain from appropriate U.S. state authorities and transmit to the foreign Central Authority a statement as to the wrongfulness of the taking of the child under the laws of the child's state of habitual residence;

(e) Upon request, facilitate efforts to obtain from appropriate U.S. state authorities and transmit to the foreign Central Authority information relating to the social background of the child;

(f) Upon request, be available to facilitate possible arrangements for temporary foster care and/or travel for the child from the foreign country to the United States;

(g) Monitor all cases in which assistance has been sought; and

(h) Perform such additional functions as the Assistant Secretary of State for Consular Affairs may from time to time direct.

§ 94.8 Interagency Coordinating Group.

The U.S. Central Authority shall nominate federal employees and may, from time to time, nominate private citizens to serve on an interagency coordinating group to monitor the operation of the Convention and to

provide advice on its implementation. This group shall meet from time to time at the request of the U.S. Central Authority.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

May 19, 1988.

[FR Doc. 88-14139 Filed 6-22-88; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3280

[Docket No. R-88-1386; FR-2296]

Manufactured Home Construction and Safety Standards—Lead Standards in Water Piping

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The Department, at 24 CFR Part 3280, subpart G, has established standards for water piping used in manufactured homes. This rule revises these standards to require that manufactured homes to be connected to a public water system be constructed with "lead-free" water pipes, solder and flux, as that term is defined in the Safe Drinking Water Act Amendments of 1986. This rule will help to eliminate the serious hazard to health caused by lead ingestion.

EFFECTIVE DATE: August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Mark W. Holman, Manufactured Housing and Construction Standards Division, Room 9152, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000. Telephone (202) 755-6590. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Congress enacted the Safe Drinking Water Act Amendments of 1986 (Pub. L. 99-339, approved June 1986) (Act) to limit the amount of lead allowed in water piping. Section 109(a)(1) of the Act requires that "Any pipe, solder, or flux, which is used after [June 19, 1986] in the installation or repair of * * * (B) any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system, shall be lead free * * *." Under section 109(c)(2), solders and flux can contain no more than 0.2 percent lead and pipes and fittings can contain no more than eight percent lead to be considered "lead-free." The limitations of the Act become effective on June 19, 1988.

Section 625 of the National Manufactured Housing Construction and Safety Standards Act of 1974 permits the Secretary to amend the Manufactured Home Construction and Safety Standards "as he deems necessary." Accordingly, this final rule amends 24 CFR 3280.609(d)(3) to provide that a newly constructed manufactured home with a manufacture date on or after August 11, 1988 which is connected to a public water system must contain water piping which is lead free. In accordance with the Act, the rule provides that water piping and fittings will be considered "lead-free" if they contain no more than eight percent lead. The final rule also amends § 3280.605(a)(3), also conforming it to the Act, to prohibit solder and flux used with tubing from containing more than 0.2 percent lead.

Section 604(e) of the National Manufactured Housing Construction and Safety Standards Act of 1974 provides that an order amending a Federal manufactured home construction and safety standard shall not be effective sooner than one hundred and eighty days from the date the order is issued. An earlier effective date may be designated, however, if "the Secretary finds, for good cause shown, that an earlier * * * date is in the public interest, and publishes his reasons for such findings." In this case, the Secretary hereby finds that it is in the public interest that this rule be effective as soon as possible. The limitations of the Safe Drinking Water Act Amendments of 1986 became effective on June 19, 1988 with respect to mortgages covering site-built housing insured by the Department. The Secretary, therefore, finds that there is good cause to make this rule effective on August 11, 1988 because, in addition to its ensuring consistency with an identical requirement in a parallel rule published in the April 6, 1988 edition of the **Federal Register** (see 53 FR 11270) that only "lead-free" piping may be used in site-built housing covered by FHA mortgage insurance, the rule also will contribute to the elimination of a serious harm to health from lead ingestion. (Although the Act would have allowed this rule to become effective on June 19, 1988, under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535 (o)(3)), the rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. Today's publication date, therefore, means that, in accordance with section 7(o)(3), this rule cannot become effective before August 11, 1988.)

Accordingly, the Secretary has determined that under 24 CFR 3282.105(a) notice is unnecessary, and, because of the urgent need to eliminate a potential health hazard, this regulation should be published as a final rule.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for the applicability of Federal lead-free standards with respect to piping used in manufactured homes connected to public water systems. It does not impose any economic burdens on small entities beyond those that may result from the prohibitions of the new law.

This rule is listed as Item No. 935 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13874) under Executive Order 12291 and the Regulatory Flexibility Act.

(The Catalog of Federal Domestic Assistance program number is 14.171)

List of Subjects in 24 CFR Part 3280

Fire prevention, Housing standards, Mobile homes.

Accordingly, the Department amends 24 CFR Part 3280 as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. The authority citation for Part 3280 continues to read as follows:

Authority: Title VI of the Housing and Community Development Act of 1974 (42 U.S.C. 5401); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 3280.605, paragraph (a)(3) is revised to read as follows:

§ 3280.605 Joints and connections.

(a) * * *

(3) *Solder joints.* Solder joints for tubing shall be made with approved or listed solder type fittings. Surfaces to be soldered shall be cleaned bright. The joints shall be properly fluxed with noncorrosive paste type flux and, for manufactured homes to be connected to a public water system, made with solder having not more than 0.2 percent lead.

* * * * *

3. In § 3280.609, paragraph (d)(3) is revised to read as follows:

§ 3280.609 Water distribution system.

* * * * *

(d) * * *

(3) *Prohibited material.* Used piping materials shall not be permitted. Those pipe dopes, solder, fluxes, oils, solvents, chemicals, or other substances that are toxic, corrosive, or otherwise detrimental to the water system shall not be used. In addition, for those manufactured homes to be connected to a public water system, all water piping shall be lead-free (as defined in Section 109(c)(2) of the Safe Drinking Water Act Amendments of 1986) with solders and flux containing not more than 0.2 percent lead and pipes and pipe fittings containing not more than 8.0 percent lead.

* * * * *

Dated: June 14, 1988.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88-14241 Filed 6-22-88; 8:45 a.m.]

BILLING CODE 4210 27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301 and 602

[T.D. 8210]

Foreign Tax Credit; Notification and Adjustment Due to Foreign Tax Redeterminations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations and Regulations on Procedure and Administration relating to a taxpayer's obligation under section 905(c) of the Internal Revenue Code of 1986 to file notice of a foreign tax redetermination or to make an adjustment to the taxpayer's pools of foreign taxes and earnings and profits, as the case may be, and the civil penalty for failure to file that notice or to make such adjustment. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

DATES: The amendments made by §§ 1.905–3T and 1.905–4T are effective with respect to foreign tax redeterminations that occur July 25, 1988, except that, in the case of a tax deemed paid under section 902 or section 960, the amendments made by § 1.905–3T are effective with respect to earnings and profits of a foreign corporation accumulated in taxable years beginning after December 31, 1986. Sections 1.905–5T and 301.6689–1T are effective with respect to foreign tax redeterminations that occur after December 31, 1979.

FOR FURTHER INFORMATION CONTACT: Eli J. Dicker of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T (INTL–061–86)) (202–566–3490, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1056. The estimated average burden associated with the collection of information in this regulation is one hour per respondent.

For further information concerning this collection of information, and where to submit comments on this collection of information and the accuracy of the estimated burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register.**

Background

This document contains temporary regulations under sections 905(c) and 6689 of the Internal Revenue Code of 1986. These temporary regulations conform the regulations to the changes made to the Internal Revenue Code by section 2(c)(2) of the Act of December 28, 1980 (Pub. L. 96–603, 94 Stat. 3503, 3509) and section 1261(a) of the Tax Reform Act of 1986 (TRA of 1986) (Pub. L. 99–514, 100 Stat. 2085, 2591), and are issued under the authority contained in section 6689 (94 Stat. 3509; 26 U.S.C. 6689), section 989(c)(4) (100 Stat. 2591 26 U.S.C. section 989), and section 7805 (68 Stat. 917; 26 U.S.C. section 7805) of the Internal Revenue Code of 1986.

Need for Temporary Regulations

Section 989(c)(4), which was added by the Tax Reform Act of 1986, provides that the Secretary may provide by regulations alternatives to redetermining a taxpayer's United States tax liability under section 905(c). Because those alternatives include a new method by which certain foreign tax redeterminations shall be accounted for through adjustments to multi-year pools of foreign taxes and earnings and profits, there is a need for immediate guidance in this regard, and the Internal Revenue Service has found it to be impractical to issue these temporary regulations either with the notice and public comment procedure under section 553(b) of title 5 of the United States Code, or the effective date limitation under section 553(d) of title 5.

Explanation of Provisions

In General

Under section 905(c), if accrued taxes when paid differ from the amounts claimed as credits or if any tax paid is refunded, the taxparyer must notify the Secretary. Upon receiving notice, the Secretary recomputes the amount of the taxpayer's United States tax liability for the year or years affected. If additional

tax is due, upon notice and demand, the taxpayer must pay it. The amount of tax overpaid, if any, shall be refunded to the taxpayer in accordance with subchapter B of chapter 66 of the Code.

The current regulations under section 905(c) do not provide sufficient guidance regarding the events that trigger section 905(c), the notification the taxpayer must file, and the time any such notification must be filed. In addition, regulatory guidance is required with respect to section 6689 (relating to failure to file notice of a foreign tax redetermination), and section 989(c)(4) (providing for alternative adjustments to the application of section 905(c)).

Under section 902, as amended by the Tax Reform Act of 1986, a shareholder in a foreign corporation determines the amount of foreign taxes deemed paid by that shareholder on the basis of multi-year pools of earnings and profits and taxes. It was anticipated that alternative adjustments under section 989(c)(4) would take the form of increases and decreases to the multi-year pools of earnings and profits and foreign taxes for each separate category of income of a foreign corporation. Under prior law, foreign tax redeterminations that occurred with respect to foreign taxes paid by a foreign corporation and deemed paid by a United States taxpayer required a recomputation of the United States taxpayer's United States tax liability for the year or years affcted by that redetermination. Under these temporary regulations, a foreign tax redetermination that affects foreign taxes deemed paid by the a United States taxpayer will be accounted for, with certain exceptions, through an adjustment to the affected pools of earnings and profits and foreign taxes of the foreign corporation. the exceptions to that general rule will require a redetermination of United States tax liability for the year or years affected.

Specific Provisions

Section 1.905–3T(a) sets out the scope of § 1.905–3T. Generally, that section will apply to foreign tax redeterminations occurring in taxable years beginning after December 31, 1986. In the cases of foreign tax redeterminations with respect to foreign taxes deemed paid, the redetermination must be with respect to taxes paid on earnings and profits and foreign taxes accumulated in taxable years beginning after December 31, 1986.

Section 1.905–3T(b) sets out the foreign currency translation rules applicable to accruals of foreign tax, payments of foreign tax and refunds of foreign tax. Section 1.905–3T(b)(4) provides the method by which refunds of foreign tax are allocated to separate categories of income. Section 1.905–3T(c) defines the term "foreign tax redetermination."

Section 1.905–3T(d)(1) provides that, if a foreign tax is paid directly by a United States person (and is creditable under section 901), a redetermination of the taxpayer's United States tax liability is required. A de minimis exception to recomputing the taxpayer's United States liability applies if the foreign tax redetermination arises solely from a foreign currency fluctuation.

Section 1.905–3T(d)(2) provides rules concerning foreign tax redeterminations that affect the amount of foreign tax deemed paid by a United States taxpayer under section 902 or 960. In general, such foreign tax redeterminations are to be reflected in the foreign corporation's pools of earnings and profits and foreign taxes. However, there are four exceptions to this rule.

First, the taxpayer is required to reflect a foreign tax redetermination affecting the amount of foreign taxes deemed paid on the initial return claiming those taxes as a credit if the foreign tax redetermination occurs before the date that is 90 days prior to the due date of the United States return and before the United States taxpayer actually files that return. If the redetermination occurs within 90 days of the due date and prior to the filing of the return, then the taxpayer may elect to either adjust the foreign tax credit to be claimed on the return or adjust the pools to reflect the effect of the foreign tax redetermination.

Second, a taxpayer must redetermine its United States liability if the foreign tax liability is in a hyperinflationary currency.

Third, the United States liability must be redetermined if the foreign tax redetermination occurs after a distribution to a United States taxpayer or inclusion in income with respect to a United States shareholder and the redetermination would cause the foreign corporation's pool of foreign taxes to be reduced below zero.

Fourth, the Service, in its discretion, may require a taxpayer to redetermine its United States liability if the amount of the foreign tax liability accrued in foreign currency exceeds the amount of foreign tax paid in foreign currency by at least two percent.

Section 1.905–3T(d)(2)(iii) sets out the notification and information reporting requirements when an adjustment is made to a foreign corporation's pools of earnings and profits and foreign taxes. That section also describes the interest and penalties to be imposed for failure to make the proper adjustment or provide the proper notice of a foreign tax redetermination.

Section 1.905–3T(d)(2)(iv) provides examples illustrating the application of the rules of §§ 1.905–3T(d)(2)(ii) and 1.905–3T(d)(2)(iii).

Section 1.905–3T(d)(3) provides rules regarding the method of adjustment to a foreign corporation's pools of taxes and earnings and profits if a foreign tax redetermination results from a refund of foreign tax or an additional assessment of foreign tax.

Section 1.905–3T(d)(3)(iv) provides a special rule that applies when a lower tier foreign corporation receives a refund for foreign tax after making a distribution to an upper tier foreign corporation and the refund would have the effect of reducing below zero the lower tier corporation's pool of foreign taxes in any separate category. The rules of that paragraph provide a formula for computing the proper adjustment to both the upper and lower tier foreign corporations' pools of foreign taxes. This rule is intended to prevent deficits in foreign tax pools. Section 1.905–3T(d)(3)(v) provides examples illustrating the application of this rule.

Section 1.905–3T(d)(4) sets out the exceptions described above to the general rule of pooling adjustments to account for the effect of a foreign tax redetermination.

Section 1.905–3T(e) provides rules relating to the imposition of foreign tax on a refund for foreign tax.

Section 1.905–3T(f) requires United States shareholders to redetermine their United States tax liability (upon receipt or previously taxed income) if a foreign country imposed tax on income of a controlled foreign corporation included in income of the United States shareholder under section 951(a)(1) and that tax is reduced upon the distribution of earnings and profits of the controlled foreign corporation. The temporary regulations do not provide special rules concerning the method of determining the amount of foreign taxes paid or deemed paid in cases in which the corporate level tax is reduced and additional tax, either withholding tax or a second level corporate tax, is imposed. Taxpayers are invited to comment on determining the appropriate method of making these adjustments in split rate and imputation systems.

Section 1.905–4T provides rules regarding the notification requirements imposed on a United States taxpayer when a redetermination of United States tax liability is or may be required. Section 1.905–4T(b) provides that the

taxpayer shall file a notice of foreign tax redetermination. That notice will be made on an amended return, Form 1120X or 1040X, and Form 1118 or Form 1116, relating to computing the foreign tax credit, in the manner described in the instructions to the Form 1118. Section 1.905–4T(b)(3) (i), (ii), and (iii) provides the information to be included on the Forms. Section 1.905–4T(b)(2) provides rules regarding the time for filing the notice of foreign tax redetermination.

Section 1.905–4T(c)(1) provides rules regarding the imposition of interest if a redetermination of United States tax results in either an overpayment or deficiency of United States tax.

Section 1.905–4T(c)(2) provides that a deficiency or overpayment of United States tax liability does not result from a redetermination of foreign tax unless a redetermination of United States tax liability is required. Therefore, no interest shall be paid by or to a United States corporation as a result of adjustments made by a foreign corporation to its pools of foreign taxes and earnings and profits.

Section 1.905–4T(d) sets out the effective date for § 1.905–4T.

Generally, § 1.905–5T sets out rules governing the application of section 905(c) to foreign tax redeterminations occurring in taxable years beginning prior to January 1, 1987. Foreign tax redeterminations occurring after December 31, 1986, with respect to foreign taxes deemed paid under section 902 or 960 with respect to earnings and profits accumulated in taxable years of the foreign corporation beginning prior to January 1, 1987 are also governed by that section.

Section 1.905–5T(b) provides the foreign currency translation rules for foreign tax redeterminations governed by § 1.905–5T. Section 1.905–5T(c) defines the term "foreign tax redetermination" by reference to the definition contained in § 1.905–3T(c).

Section 1.905–5T(d) (1), (2), (3), and (4) sets out the information required to be provided to the Internal Revenue Service in order to recompute a taxpayer's United States tax liability.

Section 1.905–5T(e) provides a de minimis exception to the notification and redetemination requirements of § 1.905–5T.

Section 1.905–5T(f) provides the effective date for § 1.905–5T.

Section 301.6689–1T sets out rules governing the imposition of the civil penalty under section 6689 of the Internal Revenue Code for failure to file notice of a foreign tax redetermination within the applicable time period. Section 301.6689–1T(d) provides a reasonable cause exception to the imposition of the civil penalty, and details the conditions necessary for the application of that exception.

Special Analyses

These rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Therefore, these rules do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6) and a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Eli J. Dicker of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects

26 CFR 1.861–1 Through 1.997–1

Income taxes, United States investments abroad, Foreign currency, Foreign tax credit.

26 CFR 301.6654–1 Through 301.6696–1

Income taxes, Administration and procedure, Penalties.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of amendments to the regulations

Accordingly, 26 CFR Parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for Part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805. * * * Sections 1.905–3T and 1.905–4T also issued under 26 U.S.C. 989 (c)(4).

§§ 1.905–3 and 1.905–5 [Removed]

Par. 2. Sections 1.905–3 and 1.905–5 are removed.

§ 1.905–4 [Removed]

§ 1.905–2 [Amended]

Par. 3. The text of § 1.905–4 is redesignated as paragraph (d) of § 1.905–2.

Par. 4. New §§ 1.905–3T, 1.905–4T and 1.905–5T are added immediately after § 1.905–2 to read as follows:

§ 1.905–3T Adjustments to the pools of foreign taxes and earnings and profits when the allowable foreign tax credit changes (Temporary).

(a) *Foreign tax redeterminations subject to sections 985 through 989 of the Internal Revenue Code.* This section applies to a foreign tax redetermination that occurs in a taxpayer's taxable year beginning after December 31, 1986 with respect to—

(1) Tax that is paid or accrued by or on behalf of a taxpayer (including taxes paid or accrued prior to January 1, 1987), or

(2) Tax that is deemed paid or accrued by a taxpayer under section 902 or section 960 with respect to earnings and profits of a foreign corporation accumulated in taxable years of the foreign corporation beginning after December 31, 1986.

(b) *Currency translation rules*—(1) *Accrual of foreign tax.* Accrued and unpaid foreign tax liabilities denominated in foreign currency, as determined under foreign law, shall be translated into dollars at the exchange rate as of the last day of the taxable year of the taxpayer.

(2) *Payments of foreign tax.* Foreign tax liabilities denominated in foreign currency shall be translated into dollars at the rate of exchange for the date of the payment of the foreign tax. Tax withheld in foreign currency shall be translated into dollars at the rate for the date on which the tax is withheld. Estimated tax paid in foreign currency shall be translated into dollars at the rate for the date on which the estimated tax payment is made.

(3) *Refunds of foreign tax.* A refund of foreign tax shall be translated into dollars using the exchange rate for the date of the payment of the foreign taxes. If a refund of foreign tax relates to foreign taxes paid on more than one date, then the refund shall be deemed to be derived from, and shall reduce, the last payment of foreign taxes first, to the extent thereof. See § 1.905–3T(d)(3) relating to the method of adjustment of a foreign corporation's pools of earnings and profits and foreign taxes.

(4) *Allocation of refunds of foreign tax.* Refunds of foreign tax shall be allocated to the same separate category as foreign taxes to which the refunded taxes relate. Refunds are related to foreign taxes of a separate category if the foreign tax that was refunded was imposed with respect to that separate category. See section 904(d) and § 1.904–

6 concerning the allocation of taxes to separate categories of income. Earnings and profits of a foreign corporation in the separate category to which the refund relates shall be increased to reflect the foreign tax refund.

(5) *Basis of foreign currency refunded.* A recipient of a refund of foreign tax shall detemine its basis in the currency refunded under the following rules.

(i) If the functional currency of the qualified business unit (as defined in section 989 and the regulations thereunder, hereinafter "QBU") that paid the tax and received the refund is the United States dollar or the person receiving the refund is not a QBU, then the recipient's basis in the foreign currency refunded shall be the dollar value of the refund determined, under paragraph (b)(2) of this section, on the date the foreign tax was paid.

(ii) If the functional currency of the QBU receiving the refund is not the United States dollar and is different from the currency in which the foreign tax was paid, then the recipient's basis in the foreign currency refunded shall be equal to the functional currency value of the non-functional refunded translated into functional currency at the exchange rate between the functional currency and the non-functional currency, determined under paragraph (b)(2) of this section, on the date the foreign tax was paid.

(iii) If the functional currency of the QBU receiving the refund is the currency in which the refund was made, then the recipient's basis in the currency received shall be the amount of the functional currency received.

For purposes of determining exchange gain or loss on the initial payment of foreign tax in a non-functional currency, see section 988. For purposes of determining subsequent exchange gain or loss on the disposition of non-functional currency the basis of which is determined under this rule, see section 988.

(c) *Foreign tax redetermination.* For purposes of this section, the term "foreign tax redetermination" means a change in the foreign tax liability/ that may affect a United States taxpayer's foreign tax credit. A foreign tax redetermination includes—

(1) A refund of foreign taxes;

(2) A difference between the dollar value of the accrued foreign tax and the dollar value of the foreign tax actually paid attributable to differences in the units of foreign currency paid and the units of foreign currency accrued; or

(3) A difference between the dollar value of the accrued foreign tax and the dollar value of the foreign tax actually paid attributable to fluctuations in the value of the foreign currency relative to the dollar between the date of accrual and the date of payment.

(d) *Redetermination of United States tax liability*—(1) *Foreign taxes paid directly by a United States person.* If a foreign tax redetermination occurs with respect to foreign tax paid or accrued by or on behalf of a United States taxpayer, then a redetermination of the United States tax liability is required for the taxable year for which the foreign tax was claimed as a credit. See § 1.905–4T(b) which requires notification to the Internal Revenue Service of a foreign tax redetermination in situations in which a redetermination of United States liability is required. However, a redetermination of United States tax liability is not required (and a taxpayer need not notify the Service) if the foreign tax redetermination is described in paragraph (c)(3) (that is, it is caused solely by a foreign currency fluctuation), and the amount of the foreign tax redetermination with respect to the foreign country is less than the lesser of ten thousand dollars or two percent of the total dollar amount of the foreign tax initially accrued with respect to that foreign country for the taxable year. In such case, an appropriate adjustment shall be made to the taxpayer's United States tax liability in the taxable year during which the foreign tax redetermination occurs.

(2) *Foreign taxes deemed paid under sections 902 or 960*—(i) *Redetermination of the United States tax liability not required.* Subject to the special rule of paragraph (d)(4), a redetermination of United States tax liability is not required to account for the effect of a redetermination of foreign tax paid or accrued by a foreign corporation on the foreign taxes deemed paid by a United States corporation under sections 902 or 960. Instead, adjustments shall be made, and notification of such adjustments shall be filed, as required by paragraphs (d) (2) and (3) of this section.

(ii) *Adjustments to pools.* In the case of a foreign tax redetermination that affects the amount of foreign taxes deemed paid by a United States corporation for a taxable year—

(A) If the foreign tax redetermination occurs more than 90 days before the due date (determined with extensions) of the United States taxpayer's United States income tax return for such taxable year and before the taxpayer actually files that return, then that United States taxpayer shall adjust the foreign tax credit to be claimed on that return for such taxable year to account for the effect of the foreign tax redetermination (including the impact of the foreign tax redetermination on the earnings and profits of the foreign corporation);

(B) If a foreign tax redetermination occurs after the filing of the United States tax return for such taxable year, than appropriate upward or downward adjustments shall be made at the time of the foreign tax redetermination to the pool of foreign taxes and the pool of earnings and profits of the foreign corporation as provided in paragraph (d)(3) to reflect the effect of the foreign tax redetermination in calculating foreign taxes deemed paid with respect to distributions and inclusions (and the amount of such distributions and inclusions) that are includible in taxable years subsequent to the taxable year for which such tax return is filed; and

(C) If the foreign tax redetermination occurs within 90 days of the due date (determined with extensions) of the United States tax return and before the taxpayer actually files its tax return, then the taxpayer may elect either to adjust the foreign tax credit to be claimed on that return in the manner described in subparagraph (A) of this paragraph (d)(2)(ii) or adjust the pools of foreign taxes and earnings and profits to reflect the effect of the foreign tax redetermination in the manner described in paragraph (d)(2)(ii)(B), provided that consistent elections are made by the taxpayer and all other members of the affiliated group, as defined in section 1504(a), of which the taxpayer is a member, with respect to all foreign tax redeterminations occurring on or before any date within the 90 day period.

(iii) *Reporting requirements.* If an adjustment to the appropriate pool of foreign taxes and earnings and profits is required under paragraphs (d)(2)(ii) (B) or (C), the United States corporation shall attach a notice of such adjustment to its return for the year with or within which ends the foreign corporation's taxable year during which the foreign tax redetermination occurs. The United States corporation shall provide: its name and identifying number; the foreign corporation's name, address, and identifying number (if any); the amount of any refunds of foreign taxes and the exchange rate as of the time of the original payment of the refunded foreign taxes; the amounts of unrefunded foreign taxes when paid and when accrued in foreign currency, the exchange rates for the accrual and payment dates of unrefunded foreign taxes, and the dollar amounts of unrefunded foreign taxes paid and accrued; the current balances of the pools of earnings and profits and foreign taxes before and after the foreign tax

redetermination; and such other information as the Service may require. If a taxpayer may be required to redetermine its United States tax liability under paragraph (d)(4)(ii) of § 1.905–3T (relating to foreign tax adjustments of two percent or more), the notice shall sepcifically identify foreign tax adjustments described in such paragraph and shall include a complete factual description justifying the overaccrual of foreign tax. If the United States corporation fails to attach the required notice, to provide the necessary information, or to make the required adjustments, then it must provide notification of the foreign tax redetermination under § 1.905–4T. The Service may, in its discretion, make a redetermination of United States tax liability, and subject the taxpayer to the interest provisions of section 6601 and the penalty provisions of section 6689 and the regulations thereunder.

(iv) *Examples.* The following examples illustrate the application of paragraph (d)(2) (ii) and (iii) of this section. In each case, the exceptions of paragraph (d)(4) do not apply.

Example (1). Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. P is a fiscal year taxpayer whose taxable year ends on June 30. P does not request an extension for filing its United States tax return for the taxable year ending June 30, 1988 and files its return on its September 15, 1988 due date. S is a calendar year taxpayer. In 1987, S earned 100u of Subpart F income and accrued foreign taxes with respect to that income of 20u. At the time of accrual, the exchange rate was $1:4u. S paid the 20u of accrued tax with respect to its income on June 15, 1988, when the exchange rate was $1:2u. P includes the 100u in gross income under section 951(a) and claims a credit under section 960. P must use the amount of taxes actually paid by S (20u=$10) in determining foreign taxes deemed paid by P. Pursuant to paragraph (d)(2)(ii)(A), P is required to compute foreign taxes deemed paid taking into account the foreign tax redetermination that occurred on June 15, which was more than 90 days before the due date of P's tax return (September 15, 1988) and before P actually filed its return.

Example (2). The facts are the same as in *Example* (1), except that S paid its tax liability on October 16, 1988. P filed its United States income tax return for 1987 on September 15, 1987, before the foreign tax redetermination. P properly computed its section 960 credit on its 1987 return with respect to its 100u Subpart F inclusion on the basis of the amount of accrued foreign tax. Subject to the special rule of paragraph (d)(3)(iv), P is required, pursuant to the provisions of paragraph (d)(2)(ii)(B), to make the appropriate adjustments to the relevant pool of foreign taxes and pool of earnings and profits for purposes of calculating foreign taxes deemed paid in subsequent taxable years.

Example (3). Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation, P. P is a fiscal year (June 30) taxpayer, and S is a calendar year taxpayer. In 1987, S earned 100u of general limitation manufacturing income that was not Subpart F income. S accrued 40u in foreign tax with respect to that income as of the end of its taxable year when the exchange rate was $1:4u. During 1987 and 1988, P received no distributions (and had no section 951(a)(1) inclusions) from S. S paid its taxes on March 15, 1988 when the exchange rate was $1:2u (40u=$20). S received a refund of foreign tax of 20u on July 1, 1988. No section 905 (c) adjustment is required on these facts. As of the end of 1988, S's pool of general limitation accumulated earnings and profits equals 80u (100u−20u), and its pool of foreign taxes imposed on general limitation income equals $10 (40u−20u=20u, translated as of the date of payment ($1:2u), equals $10)

(3) *Adjustments to the pools of earnings and profits and foreign taxes*—(i) *In general.* If a foreign corporation is required to adjust its earnings and profits and foreign taxes under § 1.905–3T(d)(2)(ii) (B) or (C), then that adjustment shall be made in accordance with the provisions of this section.

(ii) *Refunds of foreign taxes.* A foreign corporation shall reduce its pool of foreign taxes in the appropriate separate category by the United States dollar amount of a foreign tax refund translated as provided in paragraph (b)(3). A foreign corporation shall increase its pools of earnings and profits in the appropriate separate category by the functional currency amount of the foreign tax refund. The allocation of the refund to the appropriate separate categories shall be made in accordance with §§ 1.905–3T(b)(4) and 1.904–6. If a foreign corporation receives a refund of foreign tax in a currency other than its functional currency, that refund shall be translated into its functional currency, for purposes of computing the increase to its pool of earnings and profits, at the exchange rate as of the date of the payment of the foreign tax.

(iii) *Additional assessments of foreign tax.* A foreign corporation shall increase its pool of foreign taxes in the appropriate separate category by the United States dollar amount of the additional foreign tax paid or accrued translated as provided in paragraphs (b)(1) and (2). A foreign corporation shall decrease its earnings and profits in the appropriate separate category by the functional currency amount of the additional foreign tax paid or accrued. The allocation of the additional amount of foreign tax among separate categories shall be made in accordance with § 1.904–6.

(iv) *Refunds of foreign taxes of lower tier foreign corporations that cause deficits in foreign tax pools.* If a lower tier foreign corporation receives a refund of foreign tax after making a distribution to an upper tier foreign corporation and the refund would have the effect of reducing below zero the lower tier corporation's pool of foreign taxes in any separate category, then both the lower tier and upper tier corporations shall adjust the appropriate pool of foreign taxes to reflect that refund. The upper tier foreign corporation shall adjust its pool of foreign taxes by the difference between the United States dollar amount of foreign tax deemed paid by the upper tier foreign corporation prior to the refund and the United States dollar amount of foreign tax recomputed as if the refund occurred prior to the distribution. The upper tier foreign corporation shall not make any adjustment to its earnings and profits because foreign taxes deemed paid by the upper tier corporation are not included in the upper tier corporation's earnings and profits. The lower tier foreign corporation shall adjust its pool of foreign taxes by the difference between the United States dollar amount of the refund and the United States dollar amount of the adjustment to the upper tier foreign corporation's pool of foreign taxes. The earnings and profits of the lower tier foreign corporation shall be adjusted to reflect the full amount of the refund. The provisions of this paragraph (d)(3)(iv) do not apply to distributions or inclusions to a United States person. See § 1.905–3T(d)(4)(iv) for rules relating to actual or deemed distributions made to a United States person.

(v) *Examples.* The following examples illustrate the application of this paragraph (d)(3).

Example (1). Controlled foreign corporation (CFC) is a wholly-owned subsidiary of its domestic parent, P. Both CFC and P are calendar year taxpayers. CFC has a functional currency, the u, other than the dollar and maintains its pool of earnings and profits in that currency. At the end of year 1, CFC paid 100u in taxes with respect to non-Subpart F income when the exchange rate was $1:1u. In year 2, on a date that is after P filed its United States tax return, CFC receives a refund of 50u of its year 1 taxes. CFC made no distributions to P in year 1. In accordance with paragraph (d)(3)(ii) and subject to paragraph (d)(4), CFC shall reduce its pool of foreign taxes by $50 and increase its pool of earnings and profits by 50u.

Example (2). Controlled foreign corporation (CFC) is a wholly-owned subsidiary of its domestic parent, P. Both CFC and P are calendar year taxpayers. In year 1 CFC earned 400u of general limitation manufacturing income and 200u of shipping income. On date 1, CFC paid 200u of foreign

tax, 100u with respect to general limitation manufacturing income, and 100u with respect to shipping income. On date 1, the exchange rate is $1:1u. On date 2, a date that is after the filing of P's United States tax return, CFC receives a refund of 75u, 25u of which is related to the manufacturing income and 50u of which is related to the shipping income. Subject to paragraph (d)(4), CFC shall reduce its pools of foreign taxes related to general limitation income and shipping income by $25 and $50, respectively (because the refund is translated at the rate of exchange prevailing on the date of payment of the foreign tax), and increase the respective pools of earnings and profits by 25u and 50u (because the earnings and profits are increased by the functional currency amount of the refund received). If the refund to CFC was not specifically related to any separate category of income, CFC, pursuant to § 1.904–6, is required to allocate that refund in accordance with the provisions of that section.

Example (3). CFC1 is a foreign corporation that is wholly-owned by P, a domestic corporation. CFC2 is a foreign corporation that is wholly-owned by CFC1. Unless stated otherwise, the exchange rate is always $1.1u. In year 1, CFC2 has earnings and profits of 100u (net of foreign taxes) and paid 100u in foreign taxes with respect to those earnings. CFC2 has no income and pays no foreign taxes in years 2 and 3. CFC1 has no earnings and profits other than those resulting from distributions from CFC2 and pays no foreign taxes.

Situation (i). In year 2, CFC2 receives a refund of foreign taxes of 25u. In year 3, CFC2 makes a distribution of CFC1 of 50u. CFC1 is deemed to have paid $30 of foreign taxes with respect to that distribution (50u/125u×$75). At the end of year 3, the following reflects the pools of earnings and profits and foreign taxes of CFC1 and CFC2.

	Earnings and profits(u)	Foreign taxes
CFC2:		
Y1	100	$100
Y2	100+25=125	$100−<$25>=$75
Y3	125−<50>=75	$75−<$30>=$45
CFC1:		
Y3	50	30

Situation (ii). The facts are the same as situation (i), except that CFC2 makes a distribution of 50u in year 2 and receives a refund of 75u in year 3. In year 2 the amount of foreign taxes deemed paid by CFC1 would be $50 (50u/100u×$100). Both CFC1 and CFC2 must adjust their pools of foreign taxes in year 3 because the year 3 refund would have the effect of reducing below zero CFC2's pool of foreign taxes. CFC1 reduces its pool of foreign taxes by $42.86 determined as follows: $50 (foreign taxes deemed paid on the distribution from CFC2) −$7.14 (the foreign taxes that would have been deemed paid had the refund occurred prior to the distribution (50u/175u×$25)). CFC2 reduces its pool of foreign taxes by $32.14 (the difference between the dollar value of 75u refund determined as of the date of payment of the foreign tax and the $42.86 adjustment to CFC1's pool of foreign taxes). At the end of year 3, the following reflects the pools of foreign taxes and earnings and profits for CFC1 and CFC2.

	Earnings and profits(u)	Foreign taxes
CFC2:		
Y1	100	$100
Y2	100−<50>=50	$100−<$50>=$50
Y3	50+75=125	$50−<$32.14>=$17.86
CFC1:		
Y2	50	$50
Y3	50	$50−<$42.86>=$7.14

(4) *Exceptions.* The provisions of paragraph (d)(2) of this section shall not apply and a redetermination of United States tax liability is required to account for the effect of a redetermination of foreign tax on foreign taxes deemed paid by a United States corporation under section 902 or section 960 to the extent provided in this paragraph (d)(4).

(i) *Hyperinflationary currencies.* A redetermination of United States tax liability is required if the foreign tax liability is in a hyperinflationary currency. The term "hyperinflationary currency" means the currency of a country in which there is cumulative inflation during the base period of at least 100% as determined by reference to the consumer price index of the country listed in the monthly issues of International Financial Statistics, or a successor publication, of the International Monetary Fund. "Base period" means, with respect to any taxable year, the thirty-six calendar months immediately preceding the last day of such taxable year (see § 1.985–2T(b)(2)).

(ii) *Foreign tax adjustment of two percent or more.* If the foreign tax liability of a United States taxpayer is in a currency other than a hyperinflationary currency and the amount of foreign tax accrued for the taxable year to a foreign country, as measured in units of foreign currency, exceeds the amount of foreign tax paid to that foreign country for the taxable year (as measured in units of foreign currency) by at least two percent, then the Service, in its discretion, may require a redetermination of United States tax liability.

(iii) *Example.* The provisions of paragraph (d)(4)(ii) are illustrated by the following example.

Example. Controlled foreign corporation is a wholly-owned subsidiary of its domestic parent, P. Both CFC and P are calendar year taxpayers. In year 1, CFC has general limitation income of 200u and, by year-end, had accrued foreign taxes with respect to that income of 100u when the exchange rate is $1:1u. In year 1, CFC makes a distribution to P of 50u, half of its earnings and profits of 100u. P is deemed to have paid $50 of foreign tax with respect to that distribution (50u/100u × $100). In year 2, after P has filed its United States tax return, CFC pays its actual foreign tax liability of 98.50 when the exchange rate is $1:1u. Subject to paragraph (d)(4), CFC must reduce its pool of foreign taxes by $1.50 and increase the corresponding pool of earnings and profits by 1.50u. (The refund is translated into dollars at the rate of exchange prevailing on the date of payment of the foreign tax, and the adjustment to earnings and profits is in "u"s.) In year 2, CFC earns 200u of general limitation income and accrues 120u of tax when the exchange rate is $1:1u. In year 2, CFC distributes 100u to P. P is deemed to have paid $128 of foreign tax (($48.50 + $120) × 100u/(51.50u + 80u)). In year 3, after P filed its year 2 United States tax return, CFC pays its actual year 2 tax liability of 100u when the exchange rate is $1:1u. The Service may require P to recompute its year 2 United States tax liability to account for the effect of the overaccrual of foreign tax pursuant to § 1.905–3T(d)(4)(ii).

(iv) *Deficit in foreign tax pool.* A redetermination of United States tax liability is required if a foreign tax redetermination occurs with respect to foreign taxes deemed paid with respect to a Subpart F inclusion or an actual distribution which has the effect of reducing below zero the distributing foreign corporation's pool of foreign taxes in any separate category. Whether a foreign corporation's pool of foreign taxes is reduced below zero shall be determined at the close of the taxable year of the foreign corporation in which the foreign tax redetermination occurred. In no case shall taxes paid or accrued with respect to one separate category be applied to offset a negative balance in any other separate category.

(v) *Example.* The provisions of paragraph (d)(4)(iv) are illustrated by the following example.

Example. Controlled foreign corporation (CFC) is a wholly-owned subsidiary of P, a domestic corporation. Both P and CFC are calendar year taxpayers. In year 1, CFC has 200u of general limitation income with respect to which 100 of taxes are paid when the exchange rate was $1:1u. In year 1, CFC distributes half (50u) of its earnings and profits (100u). Under section 902, P is deemed to have paid $50 of the foreign taxes paid by CFC with respect to that distribution (50u/100u × $100). In year 2, CFC receives a refund of all of its year 1 taxes (100u). In year 2, CFC earns an additional 290u of income—200u of shipping income with respect to which 100u of taxes are paid, and 90u of general limitation income with respect to which 45u of taxes are paid when the exchange rate was $1:1u. P is required to redetermine its year 1 United States tax liability to account for the foreign tax redetermination occurring in year 2 because, if an adjustment to CFC's pool of general limitation taxes were made, the pool would

be <$5<. CFC is not permitted to carry a deficit in any pool of foreign taxes; therefore, P must redetermine its United States liability for year 1.

(e) *Foreign tax imposed on foreign refund.* If the redetermination of foreign tax for a taxable year or years is occasioned by the refund to the taxpayer of taxes paid to a foreign country or possession of the United States and the foreign country or possession imposed tax on the refund, then the amount of the refund shall be considered to be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund. In such case, no other credit under section 901, and no deduction under section 164, shall be allowed for any taxable year with respect to such tax imposed on such refund.

(f) *Reduction of corporate level tax on distribution of earnings and profits.* If a United States shareholder of a controlled foreign corporation receives a distribution out of previously taxed earnings and profits and a foreign country has imposed tax on the income of the controlled foreign corporation, which tax is reduced on distribution of the earnings and profits of the corporation, then the United States shareholder shall redetermine its United States tax liability for the year or years affected.

§ 1.905-4T Notification and redetermination of United States tax liability (Temporary).

(a) *Application of this section.* The rules of this section shall apply if, as a result of a foreign tax redetermination as defined in § 1.905-3T(c), a redetermination of United States tax liability is required under § 1.905-3T.

(b) *Notification*—(1) *General rules.* Any United States taxpayer for which a redetermination of United States tax liability is required shall notify the Secretary in the manner described in this paragraph (b), and the Service will redetermine the United States tax liability of the United States taxpayer. Notification shall be made by filing Form 1120X or 1040X, and Form 1118 or 1116, in the manner described in the instructions to Form 1118 with the Service Center where the taxpayer filed the tax return claiming the foreign tax credit to which the notice relates. Notification shall be filed within the time prescribed by and shall contain the information required by this paragraph (b). The amount of tax, if any, due upon a redetermination shall be paid by the taxpayer after notice and demand has been made by the Service. Subchapter B of chapter 63 of the Code (relating to deficiency procedures) shall not apply with respect to the assessment of the amount due upon such redetermination. In accordance with section 905(c) and section 6501(c)(5), the amount of additional tax due shall be assessed and collected without regard to the provisions of section 6401(a) (relating to limitations on assessment and collection). The amount of tax, if any, shown by a redetermination to have been overpaid shall be credited or refunded to the taxpayer in accordance with the provisions of § 301.6511(d)-3.

(2) *Time for filing.* If a redetermination of United States tax liability is necessitated by a foreign tax redetermination that reduced the amount of foreign taxes paid or deemed paid, then the United States taxpayer shall file the notification with respect to such foreign tax redetermination within 180 days after the date the foreign tax redetermination occurs. If a redetermination of United States liability is necessitated by a foreign tax redetermination that increased the amount of foreign taxes paid or deemed paid, then the United States taxpayer claiming foreign tax credits for accrued foreign taxes must notify the Service within the period provided by section 6511(d)(3)(A). Filing of the appropriate notification within the prescribed time shall constitute a claim for the refund of United States tax.

(3) *Notification contents*—(i) *In general.* The taxpayer shall provide the Service with information sufficient to redetermine the tax including, but not limited to the following: the United States taxpayer's name, address, and identifying number; the taxable year or years of the taxpayer that are affected by the redetermination of United States tax liability; information required in paragraph (b) (ii) and (iii) below the respect to foreign tax redeterminations affecting the redetermination of United States tax liability, including information in a form that will enable the Service to verify and compare the original computations with respect to a claimed foreign tax credit, the revised computations resulting from the foreign tax redeterminations, and the net changes resulting therefrom.

(ii) *Direct foreign tax credit.* In the case of foreign taxes paid by or on behalf of the taxpayer, if—

(A) The taxpayer receives a refund of foreign tax, the taxpayer's information shall include: the amount of foreign taxes paid in foreign currency; the date or dates the foreign taxes were paid; the rate of exchange on each date the foreign taxes were paid; the amount of the foreign taxes refunded in foreign currency;

(B) The foreign taxes when paid differ from the accrued amounts claimed as credits by the taxpayer because of fluctuation in the value of the foreign currency in which the foreign taxes were paid, the taxpayer's information shall include the following: the date on which foreign taxes were accrued and the dates on which the foreign taxes were paid; the rates of exchange for each such date; and the amount of foreign taxes accrued or paid in foreign currency on each such date;

(C) The foreign taxes when paid differ from accrued amounts claimed as credits by the taxpayer because the taxpayer is assessed additional or less foreign tax, the taxpayer's information shall include the following: the original amounts and information described in subdivision (B) of this paragraph (b)(3)(ii); the amount of additional or reduced foreign tax in foreign currency; and the revised amounts and information described in subdivision (B) of this paragraph (b)(3)(ii).

(iii) *Foreign taxes deemed paid.* In the case of foreign taxes paid or accrued by a foreign corporation that are deemed paid or accrued under section 902 or section 960 and with respect to which the taxpayer is required to redetermine its United States tax liability, the United States taxpayer's information shall include the following: the foreign corporation's name and identifying number (if any); the dates and amounts of any dividend distributions or other inclusions made out of earnings and profits for the affected year or years; and the amount of earnings and profits from which such dividends were paid for the affected year or years; and information described in paragraph (b)(3)(ii) as applied to the foreign corporation. In the case of a failure to attach the required notification or to make the required adjustments described in § 1.905-3T(d)(2)(iii), the taxpayer's information shall also include a complete factual description justifying that failure.

(c) *Interest and penalty*—(1) *General rules.* If a foreign tax redetermination results in a redetermination of United States tax liability, then interest shall be computed on the deficiency or overpayment in accordance with sections 6601 and 6611 and the regulations thereunder. No interest shall be assessed or collected on any deficiency resulting from a refund of foreign tax for any period before the receipt of the refund, except to the extent interest was paid by the foreign country or possession of the United

States on the refund for the period. In no case, however, shall interest assessed and collected pursuant to the preceding sentence for any period before receipt of the refund exceed the amount that otherwise would have been assessed and collected under section 6601 and the regulations thereunder for that period. Interest shall be assessed from the time the taxpayer (or the foreign corporation of which the taxpayer is a shareholder) receives a refund until the taxpayer pays the additional tax due the United States.

(2) *No interest on adjustments to pools of foreign taxes.* A deficiency or overpayment of United States tax liability does not result from a redetermination of foreign tax unless a redetermination of United States liability is required. Consequently, no interest will be paid by or to a United States corporation as a result of adjustments by a foreign corporation to its pools of foreign taxes and earnings and profits under paragraph (d)(2) of § 1.905–3T.

(3) *Imposition of penalty.* Failure to comply with the provisions of this section shall subject the taxpayer to the penalty provisions of section 6689 and the regulations thereunder.

(d) *Effective date.* The provisions of this section apply to foreign tax redeterminations described in § 1.905–3T(a). Notwithstanding paragraph (b)(2) of this section (relating to time for filing the required notice), the taxpayer shall have 180 days after the publication of an Announcement in the Internal Revenue Bulletin notifying taxpayers of the availability of the Forms and instructions to comply with the provisions of this section. In no case, however, shall this paragraph (d) operate to extend the statute of limitations provided by section 6511(d)(3)(A).

§ 1.905–5T Foreign tax redeterminations and currency translation rules for foreign tax redeterminations occurring in taxable years beginning prior to January 1, 1987 (Temporary).

(a) *In general.* This section sets forth rules governing the application of section 905(c) to foreign tax redeterminations occurring prior to January 1, 1987. However, the rules of this section also apply to foreign tax redeterminations occurring after December 31, 1986 with respect to foreign tax deemed paid under section 902 or section 960 with respect to earnings and profits accumulated in taxable years of a foreign corporation beginning prior to January 1, 1987.

(b) *Currency translation rules*—(1) *Foreign taxes paid by the taxpayer and certain foreign taxes deemed paid.* Foreign taxes paid in foreign currency that are paid by or on behalf of a taxpayer or deemed paid under section 960 (or under section 902 in a deemed distribution under section 1248) shall be translated into dollars at the rate of exchange for the date of the payment of the foreign tax. Refunds of such taxes shall be translated into dollars at the rate of exchange for the date of the refund.

(2) *Foreign taxes deemed paid on an actual distribution.* Foreign taxes deemed paid by a taxpayer under section 902 with respect to an actual distribution and refunds of such taxes shall be translated into dollars at the rate of exchange for the date of the distribution of the earnings to which the taxes relate.

(c) *Foreign tax redetermination.* The term "foreign tax redetermination" means a foreign tax redetermination as defined in § 1.905–3T(c).

(d) *Redetermination of United States tax liability*—(1) *In general.* A redetermination of United States tax liability is required with respect to any foreign tax redetermination subject to this section and shall be subject to the requirements of § 1.905–4T(b). The content of the notification required by this paragraph (d) shall be the same as provided in § 1.905–4(b)(3), except as modified by paragraphs (d) (2), (3), and (4) of this section.

(2) *Refunds.* In the case of any refund of foreign tax, the rate of exchange on the date of the refund shall be included in the information required by § 1.905–4T(b)(3)(ii)(A).

(3) *Foreign taxes deemed paid under section 902.* In the case of foreign taxes paid or accrued by a foreign corporation that are deemed paid or accrued under section 902 with respect to an actual distribution and with respect to which there was a redetermination of foreign tax, the United States taxpayer's information shall include, in lieu of the information required by paragraph (b)(3)(iii), the following: the foreign corporation's name and identifying number (if any); the date on which the foreign taxes were accrued and the dates on which the foreign taxes were paid; the amounts of the foreign taxes accrued or paid in foreign currency on each such date; the dates on which any foreign taxes were refunded and the amounts thereof; the dates and amounts of any dividend distributions made out of earnings and profits for the affected year or years; the rate of exchange on the date of any such distribution; and the amount of earnings and profits from which such dividends were paid for the affected year or years.

(4) *Foreign taxes deemed paid under section 960.* In the case of foreign taxes paid under section 960 (or under section 902 in the case of an amount treated as a dividend under section 1248), the rate of exchange determined under § 1.964–1 for translating accrued foreign taxes shall be included in the information required by § 1.905–4T(b)(3)(iii) in lieu of the exchange rate for the date of the accrual.

(e) *Exception for de minimis currency fluctuations.* A United States taxpayer need not notify the Service of a foreign tax redetermination that results solely from a currency fluctuation if the amount of such redetermination with respect to the foreign country is less than the lesser of ten thousand dollars or two percent of the total dollar amount of the foreign tax, prior to the adjustment, initially accrued with respect to that foreign country for the taxable year.

(f) *Special effective date.* If a foreign tax redetermination within the meaning of this section occurs after December 31, 1979, and before July 25, 1988, and the taxpayer has not notified the Service before that date of the redetermination as required under § 1.905–3 as it appeared in the CFR dated April 1, 1988, then the taxpayer shall have 180 days after the publication of an Announcement in the Internal Revenue Bulletin notifying taxpayers of the availability of the Forms and instructions to comply with the provisions of this section. Failure to comply with the provisions of this section shall subject the taxpayer to the penalty provisions of section 6689 and the regulations thereunder. In no case, however, shall this paragraph operate to extend the statute of limitations provided by section 6511(d)(3)(A).

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority for Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 301.6689–1T also issued under 26 U.S.C. 6689(a).

Par. 6. New § 301.6689–1T is added immediately after § 301.6688–1, to read as follows:

§ 301.6689–1T Failure to file notice of redetermination of foreign tax (Temporary).

(a) *Application of civil penalty.* If a foreign tax redetermination was made with respect to taxes for which the taxpayer previously claimed the foreign tax credit, and the taxpayer failed to notify the Service on or before the date

prescribed in regulations under section 905(c) or in regulations under section 404A(g) (2) for giving notice of a foreign tax redetermination, then, unless paragraph (d) of this section applies, there shall be added to the deficiency attributable to such redetermination an amount determined under paragraph (b) of this section.

(b) *Amount of penalty.* The amount of the penalty shall be equal to—

(1) Five percent of the deficiency if the failure is for not more than one month, plus

(2) An additional five percent of the deficiency for each month (or fraction thereof) during which the failure continues, but not to exceed in the aggregate twenty-five percent of the deficiency. If the penalty imposed under paragraph (a) of this section applies, then the penalty imposed under section 6653(a), relating to failure to pay by reason of negligent or intentional disregard of rules and regulations, shall not apply.

(c) *Foreign tax redetermination defined.* For purposes of this section, a foreign tax redetermination is any redetermination for which a notice is required under section 905(c) and the regulations thereunder, or section 404A(g)(2) and the regulations thereunder.

(d) *Reasonable cause.* The penalty set forth in this section shall not apply if it is established to the satisfaction of the Service that the failure to file the notification within the prescribed time was due to reasonable cause and not due to willful neglect. An affirmative showing of reasonable cause must be made in the form of a written statement that sets forth all the facts alleged as reasonable cause for the failure to file the notification on time and that contains a declaration by the taxpayer that the statement is made under the penalties of perjury. This statement must be filed with the service center in which the notification was required to be filed. The taxpayer must file this statement with the notice required under section 905(c) and the regulations thereunder or section 404A(g)(2) and the regulations thereunder. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the notification within the prescribed time, then the delay will be considered to be due to reasonable cause and not willful neglect.

(e) *Effective date.* This section is effective with respect to foreign tax redeterminations occurring after December 31, 1979.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 8. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.905–4T * * * 1545–1056", "§ 1.905–5T * * * 1545–1056", and "§ 301.6689–1T * * * 1545–1056".

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: June 1, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–14073 Filed 6–22–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 20

[Order No. 1282–88]

Procedures for States and Localities to Request Indemnification Against Claims for Damages, Costs and Other Monetary Loss Caused by Negligent Disclosure or Use of Criminal History Record Information by the FBI

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Federal Bureau of Investigation (FBI) conducts national security investigations of individuals for the purpose of determining eligibility for access to classified information or for assignment to or retention in sensitive national security duties. An essential element of these national security investigations is the review of state and local criminal history record information. While many state and localities have voluntarily provided criminal history record information to the FBI, a significant number, because of their laws or policies, have not done so. Congress, therefore, amended 5 U.S.C. 9101 which establishes a mechanism for mandatory access to such records for the purposes described above. The amendment adds the FBI to the list of agencies empowered to invoke the mandatory access provisions of 5 U.S.C. 9101. The unique combination of national security concerns, issues of states' rights, and a need to respect the privacy rights of Americans, led Congress to include an indemnification provision in the law. These regulations describe who may request an indemnification agreement and describe the mandatory provisions of the FBI's Indemnification Agreement, the procedures for requesting the agreement, and the procedures for giving notice of claims within the scope of the agreement.

EFFECTIVE DATE: June 23, 1988. These provisions shall expire December 4, 1988 unless extended or limited by Congress.

FOR FURTHER INFORMATION CONTACT: Joseph R. Davis, Esq., 202–324–3000.

SUPPLEMENTARY INFORMATION: These regulations were prepared by the FBI and represent the interpretation of Title VIII of Pub. L. 99–169, §§ 801–803, 99 Stat. 1002, 1008–1011 (1985), as amended by Public Law 99–569, § 402, 100 Stat. 3190, 3196 (1986).

This is not a major rule within the meaning of Executive Order 12291. Therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small business and, therefore, is not subject to the Regulatory Flexibility Act (5 U.S.C. 601–602).

List of Subjects in 28 CFR Part 20

National security investigations, Indemnification.

For the reasons set forth in the preamble, 28 CFR Part 20 is amended as follows:

1. The authority citation for Part 20 is revised to read as follows:

Authority: Pub. L. 93–83; 87 Stat. 197 (42 U.S.C. 3701, et seq.; 28 U.S.C. 534); Pub. L. 92–544, 86 Stat. 1115; Pub. L. 99–169, 99 Stat. 1002, 1008–1011, as amended by Pub. L. 99–569, 100 Stat. 3190, 3196.

2. Subpart D, consisting of §§ 20.39–20.43 and an appendix, is added to read as follows:

Subpart D—Procedures for States and Localities to Request Indemnification Against Claims For Damages, Cost or Other Monetary Loss Caused by Negligent Disclosure or Use of Criminal History Record Information by the FBI

Sec.

Subpart D—Procedures for States and Localities to Request Indemnification Against Claims For Damages, Cost or Other Monetary Loss Caused by Negligent Disclosure or Use of Criminal History Record Information by the FBI

§ 20.39 Scope and purpose.

(a) Pursuant to 5 U.S.C. 9101, the FBI has the right to criminal history information of state and local criminal justice agencies in order to determine whether a person may:

(1) Be eligible for access to classified information;

(2) Be assigned to sensitive national security duties; or

(3) Continue to be assigned to national security duties.

(b) This part set out the conditions under which the FBI may sign an agreement to indemnify and hold harmless a state or locality against claims for damages, costs, and other monetary loss caused by negligent disclosure or use of criminal history record information by the FBI.

(c) The procedures set forth in this part do not apply to situations where the FBI seeks access to the criminal history records of another Federal agency.

(d) By law these provisions inplementing 5 U.S.C. 9101(b)(3) shall expire December 4, 1988, unless the duration of said section is extended or limited by Congress.

§ 20.40 General definitions.

For the purpose of §§ 20.39 through 20.43 of Subpart D:

"Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges and any disposition arising therefrom, sentencing, corrections supervision, and release. The term does not include indentification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term does not include those records of a state or locality sealed pursuant to law from access by state and local criminal justice agencies of that state or locality.

"Locality" means any local government authority or agency or component thereof within a state having jurisdiction over matters at a county, municipal or other local government level.

"State" means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of Pacific Islands, and any other territory or possession of the United States.

§ 20.41 Eligibility for indemnification.

As provided for under 5 U.S.C. § 9101(b)(3), a state or locality may request an indemnification agreement. To be eligible for an indemnification agreement a state or locality must have had a law in effect on December 4, 1985 that prohibited or had the effect of prohibiting the disclosure of criminal history record information to the FBI.

§ 20.42 Procedures for requesting an indemnification agreement.

When requesting an indemnification agreement, the state or locality must notify the FBI, at the address listed in the appendix to this part, of its eligibility for an indemnification agreement. It must also:

(a) Certify that on December 4, 1985, the state or locality had in effect a law which prohibited or had the effect of prohibiting the disclosure of criminal history record information to the FBI; and

(b) Append to the request for an indemnification agreement a copy of such law.

§ 20.43 Terms of indemnification.

The terms of the indemnification agreement must conform to the following provisions:

(a) *Eligibility.* The state or locality must certify that its law prohibits or has the effect of prohibiting the disclosure of criminal history record information to the FBI for the purposes described in § 20.39(a) and that such law was in effect on December 4, 1985.

(b) *Liability.* The indemnification agreement must reflect the following:

(1) The FBI must agree to indemnify and hold harmless the state or locality from any claim for damages, costs and other monetary loss arising from the negligent disclosure or use by the FBI of criminal history record information obtained from that state or locality pursuant to 5 U.S.C. 9101.

(2) The indemnification will include the officers, employees, and agents of the state or locality.

(3) The indemnification agreement will not extend to any act or omission prior to the transmittal of the criminal history record information to the Federal agency.

(4) The indemnification agreement will not extend to any negligent acts on the part of the state or locality in compiling, transcribing or failing to delete or purge any of the information transmitted.

(c) *Consent and access requirement.* In requesting the release of criminal history record information from the state or locality, the FBI represents that:

(1) It has obtained the written consent of the individual under investigation after advising him or her of the purposes for which that information is intended to be used by a Privacy Act of 1974, 5 U.S.C. 552a, or equivalent notice;

(2) It has advised that individual of the right of access to that information by a Privacy Act advisement, 5 U.S.C. § 552a, or equivalent notice; and

(3) Upon request, the FBI will provide the individual access to criminal history record information received from the state or locality, as required by 5 U.S.C. § 9101(d).

(d) *Purpose requirements.* The Federal agency will use the criminal history record information only for the purposes stated in § 20.39.

(e) *Notice and litigation procedures.* The state or locality must utilize the following notice procedures when filing a claim:

(1) The state or locality must give notice of any claim against it on or before the 10th day after the day on which a claim against it is received, or on which it has notice of such a claim.

(2) The notice must be given to the Attorney General and to the United States Attorney of the district embracing the place wherein the claim is made.

(f) *Final determination.* The Attorney General shall make all determinations regarding the settlement or defense of such claims.

Appendix—Address of the Federal Bureau of Investigation

Federal Bureau of Investigation, 9th Street & Pennsylvania Avenue NW., Washington, DC 20535.

Date: June 10, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-13768 Filed 6-22-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 565

Panamanian Transactions Regulations; Correction

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: On April 8, 1988, the President issued Executive Order No.

12635, declaring a national emergency with respect to Panama, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), ordering specified measures against the Noriega/Solis regime in Panama. In implementation of that Order, the Treasury Department issued the Panamanian Transactions Regulations (the "Regulations") on June 3, 1988 (53 FR 20566), which block Panamanian government assets located in the United States and, with certain exceptions, prohibit transfers and payments to the Noriega/Solis regime from the United States, and by U.S. persons and U.S. controlled Panamanian entities located in Panama. This rule amends the Regulations to permit payment of social security taxes to the Noriega/Solis regime by U.S. persons and subsidiaries located in Panama.

EFFECTIVE DATE: June 15, 1988.

FOR FURTHER INFORMATION CONTACT: Contact Marilyn L. Muench, Chief Counsel, Tel.: (202) 376–0408, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 376–0236, Office of Foreign Assets Control, Department of the Treasury, Washington, DC.

SUPPLEMENTARY INFORMATION: Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations

List of Subjects in 31 CFR Part 565

Panama, Blocking of assets, Transfers of assets, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR Part 565 is amended as follows:

PART 565—PANAMANIAN TRANSACTIONS REGULATIONS

1. The authority citation for Part 565 continues to read as follows:

Authority: 50 U.S.C. 1701 et seq.; E.O. 12635, 53 FR 12134 (April 12, 1988).

2. Section 565.503 is amended by redesignating paragraph (b) as paragraph (c), paragraph (c) as paragraph (d), and paragraph (d) as paragraph (e) and adding a new paragraph (b) to read as follows:

§ 565.503 Certain payments authorized.

* * * * *

(b) All payments made in connection with social security taxes and fees are authorized.

* * * * *

3. In § 565.503, the newly redesignated paragraph (d) is amended by inserting the words "are authorized" in the first sentence after "business activity."

4. In § 565.503, the newly redesignated paragraph (e) is amended by removing the phrase "of social security taxes that are normally withheld for individuals and paid by other persons;."

§ 565.504 [Amended]

5. Section 565.504 is amended by removing the second sentence in its entirely, and by removing the phrase "the payment of social security taxes paid by an individual which are normally paid by his or her employer, or of other" in the third sentence.

Dated: June 16, 1988.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved:

M. Peter McPherson,

Deputy Secretary.

[FR Doc. 88–14162 Filed 6–20–88; 2:16 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD2 88-01]

Drawbridge Operation Regulations; Green River, Kentucky

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Seaboard System Railroad bridges at Spottsville, Mile 8.3, Livermore, Mile 71.2, Smallhouse, Mile 79.6, and the Paducah and Louisville (formerly Illinois Central Gulf) Railroad bridge at Rockport, Mile 94.8, presently listed as located at Mile 95.8. This change is being made because the existing regulations does not adequately reflect the operation of the bridge at Rockport, and incorrectly publishes the river mile number for this bridge as 95.8 instead of 94.8. In addition, compliance with the existing requirement, that the regulation be posted at Green River navigation locks, is not feasible. Corps of Engineers prohibit the installation of signs or fixtures, other than those pertaining to lock operations, at navigation locks. This action will accurately describe the operation of the draw, correct the mile number and reflect the name change of the bridge at Rockport. It will also delete the requirement in the existing regulation that owners of drawbridges at Spottsville, Livermore, Smallhouse and Rockport post a summary of the regulation at Green River Locks 1, 2, 3 and 4, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, telephone (314) 425–4607.

SUPPLEMENTARY INFORMATION: On April 7, 1988 the Coast Guard published proposed rules (53 FR 11516) concerning this amendment. The Commander, Second Coast Guard District, also published the proposal as a Public Notice dated April 25, 1988. In each notice interested persons were given until May 23, 1988 to submit comments.

Drafting Information

The drafters of this notice are Wanda G. Renshaw, project officer, and Commander F.P. Hopkins, project attorney.

Discussion of Comments

No comments were received on the notice of proposed rule published in the Federal Register. The U.S. Department of Interior, Fish and Wildlife Service, in response to Public Notice 2–538, commented that the proposed change is not expected to have significant impacts on fish and wildlife resources, nor is it likely to adversely affect federally listed or proposed endangered or threatened species. The final rule is unchanged from the proposed rule published on April 7, 1988.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This revision does not change the operation of the bridges for rail or river traffic. It merely describes the operation of warning signals and devices in conjunction with

the automatic operation of the drawspan at Rockport. It also deletes the requirement that the bridge owners each post summaries of the operation regulation at Green River Locks 1, 2, 3 and 4. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–01(g).

2. Section 117.415 is revised to read as follows:

§ 117.415 Green River.

(a) The draw of the Seaboard System railroad bridge, Mile 8.3 at Spottsville, shall open on signal when there is 40 feet or less of vertical clearance beneath the draw. When vertical clearance is more than 40 feet, at least four hours notice shall be given. The owners of, or agencies controlling, the bridge shall arrange for ready telephone communication with the authorized representative at any time from the bridge or its immediate vicinity.

(b) The draws of the Seaboard System railroad bridges, Miles 71.2 and 79.6 at Livermore and Smallhouse, are normally maintained in the fully open position and a vessel may pass through the draw without further signals. When the draws are in the closed position, they shall open on signal when there is 40 feet or less of vertical clearance. When the vertical clearance is more than 40 feet, at least four hours notice shall be given. During this period, if the drawtender is informed at the time the vessel passes through the draw that the vessel will return within four hours, the drawtender shall remain on duty until the vessel returns but is not required to remain for longer than four hours. The owners of, or agencies controlling, the bridge shall arrange for ready telephone communication with the authorized representative at any time from the bridge or its immediate vicinity.

(c) The Paducah and Louisville railroad bridge, Mile 94.8 at Rockport, is operated as follows:

(1) When river stage permits a vertical clearance of 34 feet or more under the closed draw, as determined from guages attached to the bridge, drawspan is in the closed-to-navigation position. Draw will open on signal for vessels requiring greater clearance if at least eight hours advance notice is given.

(2) When vertical clearance under the closed draw is less than 34 feet, drawspan is automatically raised to and maintained in the open to navigation position and closed automatically for passage of rail traffic. When drawspan is in the "open" position, and a train approaches the bridge, a siren sounds continuously and amber lights, mounted on the bridge and oriented upstream and downstream, begin flashing. After five minutes the amber flashing lights change to red, and the drawspan begins to close. If a boat is under, or enters under, the drawspan while it is closing, the boat is automatically detected by an electronic device, and the drawspan stops its downward motion and returns to the open position. After the boat passes, the drawspan closes. When the drawspan is fully closed, the siren stops and channel lights flash red. After the train has passed, the draw opens fully, and the flashing red light changes to steady green. When the bridge is being maintained in the open position and automatically closes for trains, rotating red lights are displayed atop the bridge.

(3) A warning light located on the left bank 1,000 feet upstream of the bridge is tied into the bridge's operating circuits. If water level is high, and bridge has closed for a train, upstream light will show red. If water level is high and bridge is in the open position, upstream light will show green. If water level is at normal pool or lower, bridge will be in the closed position and light will also show green.

Dated: June 8, 1988.

W.P. Leahy, Jr.,

Rear Admiral (LH), U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 88–14161 Filed 6–22–88; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 165

COTP Sault Ste. Marie Regulation 88–001; Safety Zone Regulations; West Arm of Grand Traverse Bay, MI

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the south end of the West Arm of Grand Traverse Bay. The zone is needed to protect boaters from a safety hazard associated with the low flying jet aircraft during the Blue Angels flight demonstrations being held during the National Cherry Festival. Entry into this zone is prohibited unless authorized by the Captain of the Port. This temporary regulation will affect navigation in the West Arm, Grand Traverse Bay between the hours of 1:00 p.m. and 4:00 p.m., July 1 to 4, 1988.

EFFECTIVE DATES: This regulation becomes effective on July 1, 1988. It terminates at 4:00 p.m. on July 4, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant(jg) M.J. Schmidt, Port Operations Officer, Coast Guard Group, Sault Ste. Marie, MI, at (906) 635–3222.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the boaters involved.

Drafting Information

The drafters of this regulation are Lieutenant(jg) M.J. Schmidt, project officer for the captain of the port, and Lieutenant Commander Carl V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is an Airshow being conducted during the 1988 Cherry Festival on July 1–4, 1988. Six jet aircraft will be performing very precise, high speed maneuvers which leave the pilots little room for error. In the interest of safety to the performers and the general public, a Safety Zone approximately 2 miles long and 3500 feet wide with a center point located at position 44–46.5N, 85–37.1W, will be established to provide an area free of distractions and people beneath the performance location. At 1:00 p.m. each of the four days, Coast Guard, law enforcement, and committee vessels will establish the perimeter around the Safety Zone and ensure the area is clear of all vessel traffic until 4:00 p.m. that day.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T0901 is added to read as follows:

§ 165.T0901 Safety Zone: Grand Traverse Bay, Lake Michigan

(a) *Location.* The following area is a safety zone: latitude 44–47.1N, longitude 85–38.25W; to latitude 44–46.4N, longitude 85–35.6W; south along the shoreline to latitude 44–45.95N, longitude 85–36.15W; to latitude 44–46.52N, longitude 85–38.5W; north along the shoreline back to the starting point.

(b) *Effective date.* This regulation is in effect between 1:00 p.m. and 4:00 p.m. on the 1st, 2, 3, and 4th of July, 1988.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the captain of the port.

Dated: June 1, 1988.

W.S. Viglienzone,

Captain of the Port, U.S. Coast Guard, Group Sault Ste. Marie, MI 49783.

[FR Doc. 88–14144 Filed 6–22–88; 8:45 a.m.]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3397–8; TN–074]

Approval and Promulgation of Implementation Plans, Tennessee; Bryce Corporation Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a request by Tennessee that a temporary variance granted to Bryce Corporation to use a 24-hour period for averaging volatile organic compound (VOC) emissions be incorporated into the Tennessee State Implementation Plan (SIP). Averaging times for VOC emissions are governed by Tennessee Air Pollution Control (TAPC) regulation 1200–3–18–.04(8), which specifies an 8-hour period as the maximum time over which averaging is allowed. The variance extends until February 17, 1989, of until a revision establishing twenty-four (24) hours as the maximum time over which averaging is to be allowed is effective, whichever is sooner. The Tennessee Air Pollution Control Board has approved a revision to Rule 1200–3–18–.04(8) to increase the maximum averaging time to twenty-four (24) hours. The revision will not become effective until it completes the State rulemaking process. EPA will act on the revision in a separate notice.

DATES: This action will become effective on August 22, 1988 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Kay Prince of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, GA 30365

Tennessee Air Pollution Control Division, Customs House, 4th Floor, 701 Broadway, Nashville, TN 37219

Memphis/Shelby County Health Department, 814 Jefferson Avenue, Memphis, TN 38105

Public Information Reference Unit, Library System Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Kay Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Bryce Corporation is a producer of flexible packaging materials at its plant in Memphis, Tennessee (Shelby County). Shelby County is a nonattainment area for ozone. On February 25, 1988, the Tennessee Department of Health and Environment submitted to EPA a request for a variance for averaging times for compliance with VOC emission limits which was approved by the Tennessee Air Pollution Control Board on February 18, 1988.

Averaging times for VOC emissions are currently governed by TAPC Rule 1200–3–18–.04(8), which specifies eight hours at the maximum time over which VOC emissions can be avcraged. The Tennessee Air Pollution Control Board has approved a proposal to increase the maximum allowed averaging time to twenty-four hours. EPA will act on the revision in a separate notice.

Agency policy regarding SIP revisions for averaging times for compliance with VOC emission limits is stated in a January 20, 1984, memo form John R. O'Connor, Acting Director, Office of Air Quality Planning and Standards:

> Current Agency guidance specifies the use of a daily weighted average for VOC regulations as the preferred alternative where continuous compliance is not feasible.

The aforementioned memo also indicates that daily emission caps that limit short-term emissions to RACT equivalent levels would meet the objective of ensuring VOC control in a manner that is consistent with attaining the NAAQS for ozone.

Therefore, the use of twenty-four hours as a maximum averaging time for VOC emissions is consistent with current agency policy. Because of the simplicity of this action, no technical support document was prepared.

Final Action

EPA approves the SIP revision for the Bryce Corporation temporary variance which allows a maximum of twenty-four hours for averaging of VOC emissions. This action is being taken without prior proposal because the change is noncontroversial and EPA anticipates no significant comments on it. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 22, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: The Director of the Federal Register approved the incorporation by reference of the Tennessee SIP on July 1, 1982.

Date: June 9, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(82) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(82) A variance from Rule 1200–3–18–.04(8) was submitted to EPA on February 25, 1988, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference.

(A) Tennessee Department of Health and Environment, Division of Air Pollution Control, Board Order 2–88 approved on February 18, 1988.

(B) Letter of February 25, 1988, from the Tennessee Department of Health and Environment.

(ii) Other materials-none.

[FR Doc. 88–13626 Filed 6–22–88; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[FRL–3398–7; TN–068]

Approval and Promulgation of Implementation Plans, Tennessee; Dixico, Incorporated Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a request by Tennessee that a temporary variance granted to Dixico, Incorporated to use a 24-hour period for averaging volatile organic compound (VOC) emissions be incorporated into the Tennessee State Implementation Plan (SIP). Averaging times for VOC emissions are governed by Tennessee Air Pollution Control (TAPC) regulation 1200–3–18–.04(8), which specifies an 8-hour period as the maximum time over which averaging is allowed. The variance extends until November 18, 1988, or until a revision establishing twenty-four (24) hours as the maximum time over which averaging is to be allowed is effective, whichever is sooner. The Tennessee Air Pollution Control Board has approved a revision to Rule 1200–3–18–.04(8) to increase the maximum averaging time to twenty-four (24) hours. The revision will not become effective until it completes the State rulemaking process. EPA will act on the revision in a separate notice.

DATES: This action will become effective on August 22, 1988 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Kay Prince of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

Memphis/Shelby County Health Department, 814 Jefferson Avenue, Memphis, Tennessee 38105

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Dixico, Incorporated operates flexographic presses at its plant in Memphis, Tennessee (Shelby County). Shelby County is a nonattainment area for ozone. On January 6, 1988, the Tennessee Department of Health and Environment submitted to EPA a request for a variance for averaging times for complaince with VOC emission limits which was approved by the Tennessee Air Pollution Control Board on October 2, 1987.

Averaging times for VOC emissions are currently governed by TAPC Rule 1200–3–18–.04(8), which specifies eight hours at the maximum time over which VOC emissions can be averaged. The Tennessee Air Pollution Control Board has approved a proposal to increase the maximum allowed averaging time to twenty-four hours. EPA will act on this revision in a separate notice.

Agency policy regarding SIP revisions for averaging times for compliance with VOC emission limits is stated in a January 20, 1984, memo from John R. O'Connor, Acting Director, Officer of Air Quality Planning and Standards:

> Current Agency guidance specifies the use of a daily weighted average for VOC regulations as the preferred alternative where continuous compliance is not feasible.

The aforementioned memo also indicates that daily emission caps that limit short-term emissions to RACT equivalent levels would meet the objective of ensuring VOC control in a manner that is consistent with attaining the NAAQS for ozone.

Therefore, the use of twenty-four hours as a maximum averaging time for VOC emissions is consistent with current agency policy. Because of the simplicity of this action, no technical support document was prepared.

Final Action

EPA approves the SIP revision for the Dixico, Inc. temporary variance which allows a maximum of twenty-four hours for averaging of VOC emissions. This action is being taken without prior proposal because the change is noncontroversial and EPA anticipates no significant comments on it. The public should be advised that this action will be effective 60 days from the date of the Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 22, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note.—The Director of the Federal Register approved the incorporation by reference of the Tennessee SIP on July 1, 1982.

Date: June 9, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c) 84 to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

84 A variance from Rule 1200–3–18–.04(8) was submitted to EPA on January 6, 1988, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference

(A) Tennessee Department of Health and Environment, Division of Air Pollution Control Board Order 19–87 approved on October 2, 1987.

(B) Letter of January 6, 1988, from the Tennessee Department of Health and Environment.

(ii) Other materials—none.

[FR Doc. 88–13624 Filed 6–22–88; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[FRL–3398–9; TN–067]

Approval and Promulgation of Implementation Plans, Tennessee; Harman Automotive Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a request by Tennessee that a temporary variance granted to Harman Automotive to use a 24-hour period for averaging volatile organic compound (VOC) emissions be incorporated into the Tennessee State Implementation Plan (SIP). Averaging times for VOC emissions are governed by Tennessee Air Pollution Control (TAPC) regulation 1200–3–188–.04(8), which specifies an 8-hour period as the maximum time over which averaging is allowed. The variance extends until September 16, 1988, or until a revision establishing twenty-four (24) hours as the maximum time over which averaging is to be allowed is effective, whichever is sooner. The Tennessee Air Pollution Control Board has approved a revision to Rule 1200–3–18–.04(8) to increase the maximum averaging time to twenty-four (24) hours. The revision will not become effective until it completes the State rulemaking process. EPA will act on the revision in a separate notice.

DATES: This action will become effective on August 22, 1988 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Kay Prince of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Harman Automotive operates a mirror frame coating line and a mask paint department at its plant in Bolivar, Tennessee (Hardeman County). Hardeman County is an unclassified area for ozone. On January 6, 1988, the Tennessee Department of Health and Environment submitted to EPA a request for a variance for averaging times for compliance with VOC emission limits which was approved by the Tennessee Air Pollution Control Board on August 13, 1987.

Averaging times for VOC emissions are currently governed by TAPC Rule 1200–3–18–.04(8), which specifies eight hours at the maximum time over which VOC emissions can be averaged. The Tennessee Air Pollution Control Board has approved a proposal to increase the maximum allowed averaging time to twenty-four hours. EPA will act on this revision in a separate notice.

Agency policy regarding SIP revisions for averaging times for compliance with VOC emission limits is stated in a January 20, 1984, memo from John R. O'Connor, Acting Director, Office of Air Quality Planning and Standards:

> Current Agency guidance specifies the use of a daily weighted average for VOC regulations as the preferred alternative where continuous compliance is not feasible.

The aforementioned memo also indicates that daily emission caps that limit short-term emissions to RACT equivalent levels would meet the objective of ensuring VOC control in a manner that is consistent with attaining the NAAQS for ozone.

Therefore, the use of twenty-four hours as a maximum averaging time for VOC emissions is consistent with current agency policy. Because of the simplicity of this action, no technical support document was prepared.

Final Action

EPA approves the SIP revision for the Harman Automotive temporary variance which allows a maximum of twenty-four hours for averaging of VOC emissions. This action is being taken without prior proposal because the change is noncontroversial and EPA anticipates no significant comments on it. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 22, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note.—The Director of the Federal Register approved the incorporation by reference of the Tennessee SIP on July 1, 1982.

Date: June 9, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(80) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(80) A variance from Rule 1200–3–18–.04(8) was submitted to EPA on January 6, 1988, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference.

(A) Tennessee Department of Health and Environment, Division of Air Pollution Control, Board Order 11–87 approved on August 13, 1987.

(B) Letter of January 6, 1988, from the Tennessee Department of Health and Environment.

(ii) Other materials—none.

[FR Doc. 88–13622 Filed 6–22–88; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[FRL–3398–6; TN–070]

Approval and Promulgation of Implementation Plans, Tennessee; Jehl Cooperage Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a request by Tennessee that a temporary variance granted to Jehl Cooperage to use a 24-hour period for averaging volatile organic compound (VOC) emissions be incorporated into the Tennessee State Implementation Plan (SIP). Averaging times for VOC emissions are governed by Tennessee Air Pollution Control (TAPC) regulation 1200–3–18–.04(8), which specifies an 8-hour period as the maximum time over which averaging is allowed. The variance extends until December 9, 1988, or until a revision establishing twenty-four (24) hours as the maximum time over which averaging is to be allowed is effective, whichever is sooner. The Tennessee Air Pollution Control Board has approved a revision to Rule 1200–3–18–.04(8) to increase the maximum averaging time to twenty-four (24) hours. The revision will not become effective until it completes the State rulemaking process. EPA will act on the revision in a separate notice.

DATES: This action will become effective on August 22, 1988 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Kay Prince of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

Memphis/Shelby County Health Department, 814 Jefferson Avenue, Memphis, Tennessee 38105

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Jehl Cooperage operates a drum coating facility in Memphis, Tennessee (Shelby County). Shelby County is a nonattainment area for ozone. On January 6, 1988, the Tennessee Department of Health and Environment submitted to EPA a request for a variance for averaging times for compliance with VOC emission limits which was approved by the Tennessee Air Pollution Control Board on December 10, 1987.

Averaging times for VOC emissions are currently governed by TAPC Rule 1200–3–18–.04(8), which specifies eight hours at the maximum time over which VOC emissions can be averaged. The Tennessee Air Pollution Control Board has approved a proposal to increase the maximum allowed averaging time to twenty-four hours. EPA will act on this revision in a separate notice.

Agency policy regarding SIP revisions for averaging times for compliance with VOC emission limits is stated in a January 20, 1984, memo from John R. O'Connor, Acting Director, Office of Air Quality Planning and Standards:

> Current Agency guidance specifies the use of a daily weighted average for VOC regulations as the preferred alternative where continuous compliance is not feasible.

The aforementioned memo also indicates that daily emission caps that limit short-term emissions to RACT equivalent levels would meet the objective of ensuring VOC control in a manner that is consistent with attaining the NAAQS for ozone.

Therefore, the use of twenty-four hours as a maximum averaging time for VOC emissions is consistent with current agency policy. Because of the simplicity of this action, no technical support document was prepared.

Final Action

EPA approves the SIP revision for the Jehl Cooperage temporary variance which allows a maximum of twenty-four hours for averaging of VOC emissions. This action is being taken without prior proposal because the change is noncontroversial and EPA anticipates no significant comments on it. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 22, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note.—The Director of the Federal Register approved the incorporation by reference of the Tennessee SIP on July 1, 1982.

Date: June 9, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(81) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(81) A variance from Rule 1200–3–18–.04(8) was submitted to EPA on January 6, 1988, by the Tennessee Department of Health and Environment.

(i) Incorporation of reference.

(A) Tennessee Department of Health and Environment, Division of Air Pollution Control, Board Order 29–87 approved on December 10, 1987.

(B) Letter of January 6, 1988, from the Tennessee Department of Health and Environment.

(ii) Other materials—none.

[FR Doc. 88–13623 Filed 6–22–88; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[FRL–3398–8; TN–069]

Approval and Promulgation of Implementation Plans, Tennessee; Murray Ohio Manufacturing Company Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a request by Tennessee that a temporary variance granted to Murray Ohio Manufacturing Company ("Murray Ohio") to use a 24-hour period for averaging volatile organic compound (VOC) emissions be incorporated into the Tennessee State Implementation Plan (SIP). Averaging times for VOC emissions are governed by Tennessee Air Pollution Control (TAPC) regulation 1200–3–18–.04(8), which specifies an 8-hour period as the maximum time over which averaging is allowed. The variance extends until December 9, 1988, or until a revision establishing twenty-four (24) hours as the maximum time over which averaging is to be allowed is effective, whichever is sooner. The Tennessee Air Pollution Control Board has approved a revision to Rule 1200–3–18–.04(8) to increase the maximum averaging time to twenty-four (24) hours. The revision will not become effective until it completes the State rulemaking process. EPA will act on the revision in a separate notice.

DATES: This action will become effective on August 22, 1988, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Kay Prince of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Murray Ohio manufactures lawn mowers and bicycles at its plant in Lawrenceburg, Tennessee. Lawrence County is an unclassified area for ozone. On January 6, 1988, the Tennessee Department of Health and Environment submitted to EPA a request for a variance for averaging times for compliance with VOC emission limits which was approved by the Tennessee Air Pollution Control Board on December 10, 1987.

Averaging times for VOC emissions are currently governed by TAPC Rule 1200–3–18–.04(3), which specifies eight hours at the maximum time over which VOC emissions can be averaged. The Tennessee Air Pollution Control Board has approved a proposal to increase the maximum allowed averaging time to twenty-four hours. EPA will act on this revision in a separate notice.

Agency policy regarding SIP revisions for averaging times for compliance with VOC emission limits is stated in a January 20, 1984, memo from John R. O'Connor, Acting Director, Office of Air Quality Planning and Standards:

> Current Agency guidance specifies the use of a daily weighted average for VOC regulations as the preferred alternative where continuous compliance is not feasible.

The aforementioned memo also indicates that daily emission caps that limit short-term emissions to RACT equivalent levels would meet the objective of ensuring VOC control in a manner that is consistent with attaining the NAAQS for ozone.

Therefore, the use of twenty-four hours as a maximum averaging time for VOC emissions is consistent with current agency policy. Because of the simplicity of this action, no technical support document was prepared.

Final Action

EPA approves the SIP revision for the Murray Ohio temporary variance which allows a maximum of twenty-four hours for averaging of VOC emissions. This action is being taken without prior proposal because the change is noncontroversial and EPA anticipates no significant comments on it. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 22, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note. The Director of the Federal Register approved the incorporation by reference of the Tennessee SIP on July 1, 1982.

Date: June 9, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(83) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(83) A variance from Rule 1200–3–18–.04(8) was submitted to EPA on January 6, 1988, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference.

(A) Tennessee Department of Health and Environment, Division of Air Pollution Control, Board Order 27–87 approved on December 10, 1987.

(B) Letter of January 6, 1988, from the Tennessee Department of Health and Environment.

(ii) Other materials—none.

[FR Doc. 88–13625 Filed 6–22–88; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[FRL–3395–3; TN–066]

Approval and Promulgation of Implementation Plans, Tennessee; State Industries Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a request by Tennessee that a temporary variance granted to State Industries to use a 24-hour period for averaging volatile organic compound (VOC) emissions be incorporated into the Tennessee State Implementation Plan (SIP). Averaging times for VOC emissions are governed by Tennessee Air Pollution Control (TAPC) regulation 1200–3–18–.04(8), which specifies an 8-hour period as the maximum time over which averaging is allowed. The variance extends until August 12, 1988, or until a revision establishing twenty-four (24) hours as the maximum time over which averaging is to be allowed is effective, whichever is sooner. The Tennessee Air Pollution Control Board has approved a revision to Rule 1200–3–18–.04(8) to increase the maximum averaging time to twenty-four (24) hours. The revision will not become effective until it completes the State rulemaking process. EPA will act on the revision in a separate notice.

DATES: This action will become effective on August 22, 1988 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Kay Prince of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: State Industries is a major manufacturer of water heaters located in Ashland, Tennessee (Cheatham County). Cheatham County is an unclassified area for ozone. On January 6, 1988, the Tennessee Department of Health and Environment submitted to EPA a request for a variance for averaging times for compliance with VOC emission limits which was approved by the Tennessee Air Pollution Control Board on August 13, 1987.

Averaging times for VOC emissions are currently governed by TAPC Rule 1200–3–18–.04(8), which specifies eight hours at the maximum time over which VOC emissions can be averaged. The Tennessee Air Pollution Control Board has approved a proposal to increase the maximum allowed averaging time to twenty-four hours. EPA will act on this revision in a separate notice.

Agency policy regarding SIP revisions for averaging times for compliance with VOC emission limits is stated in a January 20, 1984, memo from John R. O'Connor, Acting Director, Office of Air Quality Planning and Standards:

> Current Agency guidance specifies the use of a daily weighted average for VOC regulations as the preferred alternative where continuous compliance is not feasible.

The aforementioned memo also indicates that daily emission caps that limit short-term emissions to RACT equivalent levels would meet the objective of ensuring VOC control in a manner that is consistent with attaining the NAAQS for ozone.

Therefore, the use of twenty-four hours as a maximum averaging time for VOC emissions is consistent with current agency policy. Because of the simplicity of this action, no technical support document was prepared.

Final Action

EPA approves the SIP revision for the State Industries temporary variance which allows a maximum of twenty-four hours for averaging of VOC emissions. This action is being taken without prior proposal because the change is noncontroversial and EPA anticipates no significant comments on it. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 22, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note. The Director of the Federal Register approved the incorporation by reference of the Tennessee SIP on July 1, 1982.

Date: June 3, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(79) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(79) A variance from Rule 1200–3–18–.04(8) was submitted to EPA on January 6, 1988, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference.

(A) Tennessee Department of Health and Environment, Division of Air Pollution Control, Board Order 08–87 approved on August 13, 1987.

(B) Letter of January 6, 1988, from the Tennessee Department of Health and Environment.

(ii) Other materials—none.

[FR Doc. 88–13112 Filed 6–22–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

National Flood Insurance Program; Insurance Rates

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This final rule increases the chargeable (Subsidized) rates, which apply to all structures located in communities participating in the Emergency Program of the National Flood Insurance Program (NFIP) and to certain structures in communities in the Regular Program of the NFIP. The increase is intended to help the NFIP satisfy the premium requirements for the historical average loss year and to reduce the general taxpayer's burden with a more equitable sharing of the costs of flood losses between the general taxpayers and the insureds.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, Room 429, 500 "C" Street SW., Washington, DC 20472; telephone number (202) 646–3422.

SUPPLEMENTARY INFORMATION: On February 17, 1988, FEMA published for comment in the **Federal Register** (Vol. 53, Page 4673) as proposed rule to increase the National Flood Insurance Program (NFIP) chargeable (subsidized) rates The proposed increase was intended to help the NFIP satisfy the premium requirements for the historical average loss year and to reduce the general taxpayer's burden with a more equitable sharing of the costs of flood losses between the general taxpayers and the insureds. In addition to rate increases, other measures, such as coverage changes, optional, deductibles, rating system changes, and measures to reduce flood losses are part of the ongoing effort to achieve these goals.

The chargeable (subsidized) rates, for which an increase was proposed, are the rates applicable to structures located in communities participating in the Emergency Program of the NFIP and to certain structures in communities in the Regular Program. They are countrywide rates for two broad building type classifications which, when applied to the amount of insurance purchased and added to the expense constant, continue to produce a premium income somewhat less than necessary to cover the expense and loss payments incurred on the flood insurance policies issued on that basis. The funds needed to supplement the inadequate premium income are provided by the National Flood Insurance Fund. The subsidized rates are promulgated by the Federal Insurance Administrator for use under the Emergency Program (added to the NFIP by the Congress in section 408 of the Housing and Urban Development Act of 1969) and for use in the Regular Program on construction or substantial improvement started before December 31, 1974 (this additional grandfathering was added to the NFIP by Congress in section 103 of the Flood Disaster Protection Act of 1973) or the effective date of the initial Flood Insurance Rate Map (FIRM), whichever is later.

This final rule increases the chargeable or subsidized rates as follows:

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.55	$0.65
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.65	1.30

For comparison, the current subsidized rates are as follows:

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.50	$0.60
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.60	1.20

As indicated in the supplementary information to the proposed rule, the recently enacted Housing Bill provided that premium rates "may not be increased during the period beginning on the date of enactment of this Act and ending on September 30, 1989, by more than a prorated annual rate of 10 percent." This rate increase is within this statutory limitation.

Of the seven comments received on the proposed rule, one was opposed to the continued availability of subsidized rates and the remainder were critical of the rate increase. A number of the commentators took exception to the FEMA goal of bringing the NFIP closer to a self-supporting basis and contend that such action is inconsistent with the legislative intent for the Program which they believed was to provide "affordable" protection from flood damages while reducing the cost of mitigation to the federal government. A number of the commentators also were concerned about possibly large reductions in the number of NFIP policies as a result of the rate increase, and two commentators expressed particular concern as to the effect this would have on people with fixed or low incomes who are the ones least able to help themselves in recovering from the damages caused by flooding. Comments were also raised about the possibility of higher rates resulting in communities dropping out of the NFIP with resultant adverse effects on enforcement of floodplain management regulations and the ultimate impact this might have on disaster relief programs. A number of comments suggested various measures to improve program income, reduce

program expenses, and reduce flood damage as an alternative to rate increases. Among the measures suggested were devoting more staff time and enlisting the aid of "the federal lending agencies (FDIC, FSLIC, etc.)" in securing better enforcement of the insurance purchase requirements; initiating actions to induce property owners to purchase flood insurance for older homes or those not financed through a federally backed lending institution; initiating activities to reduce damages to flood-prone properties such as advising policyholders on how to protect themselves from flooding; providing financial incentives such as insurance rate breaks for owner-initiated floodproofing; providing a rating incentive to communities that initiate damage-reduction measures; initiating actions to address the issue of properties subject to repetitive claims; revising the regulations to establish a time limit for the substantial improvement/damage definition; and initiating action to secure legislative changes to section 1362 of the National Flood Insurance Act of 1968, as amended, to authorize a variety of flood protection techniques in lieu of property acquisition. One commentator suggested that the rates be held constant for two years while cost-saving measures previously implemented by FEMA as well as cost-saving measures currently under development can be put into place and their effectiveness be evaluated.

FEMA has responded in the past to a number of these concerns and welcomes the opportunity to again explain its rate revision program, which is part of the efforts of the Federal Insurance Administration (FIA) to implement a self-supporting nationwide flood insurance program which minimizes the general taxpayer burden through an equitable sharing of the costs of flood losses; fulfills the financial need in risk transfer for the average loss year and has mechanisms in place to develop reserves or otherwise meet the needs of catastrophic loss years; results in rates which are not excessive, inadequate, unfairly discriminatory or otherwise unreasonable; responds to competitive market conditions; improves the availability and reliability of flood insurance; and does not violate public policy. In addition to rating and coverage changes, the achievement of this goal involves appropriate support of and commitment to loss reduction activities and expanding the involvement of the private sector.

A key term in the statement of the goal is "average loss year," which in this case refers to the historical average loss year. Over the NFIP's history, the Program has not been subjected to the truly catastrophic flood event, with more than a billion dollars in flood insurance claims. Thus, the historical average is substantially less than could be expected over the long term when the influence of the extremely infrequent, truly catastrophic flood would result in a significant increase in the average year's losses.

Because the estimated amount of flood losses in any future one-year period is so uncertain, it can only be provided for by having available large loss reserves. Those reserves should be replenished by accumulating funds in low loss years to offset the drain on the reserves during heavy loss years. However, on an earned premium and incurred loss and expense basis, the NFIP has operated at a deficit since its inception. Thus, the general taxpayer has subsidized the beneficiaries of the Program through appropriations to repay borrowing authorized by statute from the U.S. Treasury to cover the losses and expenses exceeding premium income. Since the inception of the Program, the losses and expenses, not including flood plain management and mapping expenses, have exceeded premium income by one billion dollars. This has occurred even during a period where the losses have been less than can be expected over the long term. Additionally, the deficit operation has prevented any accumulation of reserves and has required the NFIP to pay interest on the borrowed funds.

Tne National Flood Insurance Act of 1968 (section 1302(d)(2)) has the requirement of "distributing burdens equitably among those who will be protected by flood insurance and the general public." FEMA has concluded that an equitable sharing of the burdens can be achieved through rating and coverage changes that will provide adequate premium income to meet losses and expenses of a "normal" year (the average year experienced to date as opposed to the average resulting from a time period including a truly catastrophic flood) and will allow for some accumulation of catastrophe reserves during lower loss years. The realization of this self-supporting goal will not eliminate the subsidy of the NFIP, but it will allow the NFIP to operate during lower loss years with an underwriting profit which can be used to pre-fund some of the reserves needed for high loss years. With the rate increase effected by this final rule, FEMA will have essentially met its goal of making the NFIP self-supporting for a "normal"year.

With respect to the legislative intent and legislative authority for FEMA to raise chargeable rates and thereby reduce of eliminate the subsidy, the General Accounting Office (GAO) in a 1983 report titled "National Flood Insurance Program—Major Changes Needed If It Is To Operate Without a Federal Subsidy," reviewed in-depth the FEMA ratemaking procedures and the Federal Insurance Administrator's goal to make the Program self-sustaining. There was no finding that indicated that the FEMA goal to obtain a self-sustaining program violated either legislative intent or authority. Indeed, the GAO concluded that "The act currently allows FEMA considerable freedom in establishing chargeable rates."

In addition to the previously mentioned legislative requirement that there be an equitable distribution of cost for flood insurance among policyholders and the general public, the 1968 Act mentions "making flood insurance coverage available on reasonable terms and conditions" (section 1302(a)). Also, the FIA goal (as stated in its planning documents) calls for the establishment of rates "which are not excessive, inadequate, unfairly discriminatory or otherwise unreasonable." (In the case of chargeable (subsidized) rates, inadequacy is accepted.) The question remains as to what rates, terms and conditions are "reasonable." Some have equated "reasonable" with "affordable." Although reasonableness may include consideration of affordability, it is not equivalent to affordability and it must take into account other concerns. While FEMA acknowledges that rate increases may cause greater concern to people with fixed or low incomes, it must be recognized that this is a nationwide Program with rates established based on broad classifications of properties; and it would be administratively complex to set rates for coverage based on income qualifications and FEMA lacks explicit legislative authority to do so, in any event. As previously stated, FEMA has concluded that it reasonable for flood insurance to be provided on terms and conditions such that losses and expenses in the historical average loss year, which is significantly less than the long-term average, can be adequately funded from premium income without the necessity of borrowing from the U.S. Treasury. Additionally, it is reasonable, even for a subsidized Program, to experience years where premium income exceeds losses and expenses so that reserves are accumulated for use in higher loss years.

The projected average annual premium for subsidized policies using the revised chargeable rates and purchasing estimated 198 amounts of insurance is $305, which is only a $27 increase. This represents 87% of the premium needed to fund historical average loss year currently projected at 1983 cost levels.

The revised chargeable rates are considered by FEMA to be reasonable. During the study of the feasibility of a flood insurance program conducted at the direction of Congress, by the Department of Housing and Urban Development in 1966, projections were made of the realistic limit of flood insurance rates at which it would still be economically justified to continue using residentially developed land while paying those rates for flood insurance. It was estimated this limit would be around $1.00 per $100 of insurance purchased to cover building and contents. The revised rates are well within this limit. Additionally, the 1966 feasibility study anticipated that only buildings within the 50-year flood plain would be subsidized. The revised chargeable rates represent a rate level that provides a subsidy to many buildings outside the 50-year flood plain and therefore actually represent a more generous subsidy.

Concerns were expressed that the rate increase may result in a large reduction to the policyholder base. The sale of new flood insurance policies appears to be influenced by several factors in addition to cost, namely mortgage activity, the local economy, insurance purchased as a result of post-flood disaster public awareness campaigns, and insurance purchased as a condition to obtain Federal disaster relief. In spite of a relatively low frequency of major flood disasters since 1982, the insurance in force has grown. The policies in force at the end of FY 1982 and FY 1987 were 1,866,801 and 2,087,854, respectively.

Regarding the concerns expressed that a rate increase may cause communities to drop out of the NFIP, FEMA knows of no community that has left the NFIP because of past rate increases and does not believe that such actions will occur as a result of this rate increase. A very substantial drop in the number of policies in force within a particular community would have to occur before local community officials might consider such a drastic action.

With respect to the suggestions that FEMA consider other measures to improve program income, reduce program expenses, and reduce flood damage, FEMA is continuing efforts to streamline its operation. For example, FEMA is currently working with representatives of the insurance agents and Write Your Own Companies to develop several simplified flood insurance products.

Regarding efforts to secure better enforcement of the insurance purchase requirements, FEMA agrees that further efforts along these lines can contribute to increased utilization of the NFIP and is expanding its efforts to educate lenders and assist the federal agencies and instrumentalities in their enforcement activities. FEMA holds regular meetings with representatives of federal agencies and instrumentalities to provide assistance and advice concerning the mandatory flood insurance requirement. FEMA has no regulatory or enforcement authority over lenders but conducts numerous workshops to make lenders aware of the flood insurance purchase requirements and the availability of flood insurance.

In regard to efforts to induce property owners to purchase flood insurance for older homes or those not financed through a federally backed lending institution, FEMA is continuing to explore ways to improve market penetration. For example, stuffers on flood insurance are being provided to insurance agents for use as enclosures when corresponding with their insureds on homeowners or other types of property insurance policies.

With respect to the suggestion for activities aimed at reducing damages to floodprone properties and providing financial incentives for initiating damage reduction measures, the commentator acknowledged that FEMA has published a manual on retrofitting buildings to protect them from flood damage. FEMA is continuing to explore ways to make flood mitigation information readily available and to develop improved information through post-flood damage assessments which includes evaluating the performance of materials and designs. Credit for floodproofing is given for residences in those communities which have been approved by FEMA for residential floodproofing credit if the building floodproofed at least one foot above the base flood elevation. FEMA agrees that it may be a good idea to extend floodproofing credit to residential buildings outside of approved communities and will be reassessing its submit-for-rate guidelines to give consideration to providing floodproofing credit in such situations. In addition, a community rating system that would enhance community loss reduction efforts, encourage fiscal soundness and that would be economically feasible to administer is currently being developed. When implemented, the community rating system will result in rate credits for floodplain management efforts beyond minimum NFIP requirements.

In response to the suggestion that FEMA take actions to address the issue of properties subject to repetitive claims, one of the criteria being considered for a community to qualify for participation in the community rating system is that the community submit a program to address any repetitive loss problem within the community if it has been idenified by FEMA as a "repetitive loss community." FEMA is continuing to look into the problem of repetitive loss claims and will be evaluating the situation to see what, if any, corrective action can be taken.

With respect to the comment on revising the regulations to establish a time limit for the substantial improvement/damage definition, the issue of substantial improvement is currently being studied by FEMA and the commentator's suggestion will be given active consideration in FEMA's next rulemaking cycle for the NFIP.

One comment concerned reducing losses to existing structures. In supporting the section 1362 Flooded Property Acquisition Program, it was noted that the acquisition of flooded properties is the most expensive method of property protection. It was further noted that section 1362(c), which authorized low interest loans to elevate single family residences that are located in the regulatory floodway, would actually keep structures in the most hazardous area of the flood plain. In making those comments, it was recommended that FEMA propose statutory amendments to correct those deficiencies. FEMA is already studying this issue in light of suggestions made by several state flood plain managers. During its review and development of a comprehensive strategy to reduce losses to existing structures, section 1362(c) and other possible vehicles will be carefully considered.

In response to the view that the rate revision be postponed until several NFIP enhancements recently implemented or proposed are studied to determine their effect on rates, FEMA believes that, in abiding by the limitation of 10%, it has taken into consideration the NFIP objectives and the expectation that the program enhancements may reduce losses.

It must be remembered that the NFIP is a catastrophe insurance program. The money that will be needed in the event of a catastrophe such as a serious hurricane could be tremendous and the financial stability of the Program could be severely undermined if sufficient

reserves are not available to defray the huge losses. In light of this, FEMA believes that the rate increase is reasonable and consistent with the use of a premium subsidy to help existing property owners maintain their properties and temporarily save capital, as well as to help these individuals salvage some of their investment in the property, as suggested in the premium payment and risk compensation discussion in the 1966 feasibility study. Further, the rate increase is consistent with the legislative purpose in section 1302(d)(2) of the 1968 Act to "provide flexibility in the program so that such flood insurance may be based on workable methods of pooling risks, minimizing costs, and distributing burdens equitably among those who will be protected by flood insurance and the general public."

FEMA has determined, based upon an Environmental Assessment, that this rule does not have a significant impact upon the quality of the human environment. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

These regulations do not have a significant economic impact on a substantial number of small entities and have not undergone regulatory flexibility analysis.

This rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and hence, no regulatory analysis has been prepared.

FEMA has determined that this rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, Subchapter B of Chapter 1 of Title 44 is amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

2. Section 61.9 is revised to read as follows:

§ 61.9 Establishment of chargeable rates.

(a) Pursuant to section 1308 of the Act, chargeable rates per year per $100 of flood insurance are established as follows for all areas designated by the Administrator under Part 64 of this subchapter for the offering of flood insurance.

RATES FOR NEW AND RENEWAL POLICIES

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.55	$0.65
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration	.65	1.30

(b) The contents rate shall be based upon the use of the individual premises for which contents coverage is purchased.

Dated: June 16, 1988.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 88-14033 Filed 6-22-88; 8:45 a.m.]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550 and 580

[Docket No. 85-19]

Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged With Shippers or Their Agents

AGENCY: Federal Maritime Commission.

ACTION: Final rule; deferral of effective date.

SUMMARY: Because of numerous inquiries from carriers and conferences concerning various aspects of the Equipment Interchange Agreement (EIA) filing requirements, the Federal Maritime Commission has determined to defer the effective date of the Final Rule in Docket No. 85-19.

DATE: The effective date of Docket 85-19 is deferred until September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission published the final rule in this proceeding in the **Federal Register** on February 26, 1988 (53 FR 5770) with an effective date of March 28, 1988. On March 9, 1988, a petition was filed by several conferences requesting a 90-day stay of the effective date. The purpose of the request was to allow carriers and conferences sufficient time to comply with the new rule. On March 21, 1988, the Commission granted that request, deferring the effective date of the Final Rule to June 26, 1988.

Since the March deferral, the Commission's staff has received numerous inquiries from the industry as to how to comply with various aspects of the EIA filing requirements. These inquiries have increased significantly in the last two weeks as the Rule's effective date nears. Because of the countinuing compliance difficulties faced by the industry, the Commission has determined to grant a further 90-day deferral of the Rule's effective date. This deferral will allow carriers and conferences 90 additional days to file their conforming tariff matter, i.e., on or before September 30, 1988, with such material to become effective 30 days after filing, if it results in an increased cost to the shipper.

By the Commission.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88-14069 Filed 6-22-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-333; RM-5749]

Radio Broadcasting Services; Millbrook, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 246A to Millbrook, Alabama, as that community's first local broadcast service, in response to an expression of continuing interest filed on behalf of William A. Gunter and Terry G. Davis. The site coordinates utilized for the allotment are 32-28-47 and 86-21-43. With this action, the proceeding is terminated.

DATES: *Effective* July 25, 1988; the window period for filing applications on Channel 246A at Millbrook, Alabama, will open on July 26, 1988, and close on August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report

and Order, MM Docket No. 87-333, adopted May 13, 1988, and released June 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended by adding Millbrook, Channel 246A, under Alabama.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14204 Filed 6-22-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-40; RM-5478; RM-5911]

Radio Broadcasting Services; Stamps and Camden, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 263C2 for Channel 261A at Stamps, AR, and modifies the Class A license of Station KMSL(FM) to reflect the higher class channel, as requested by Southwest Arkansas Broadcasting Co., Inc. A mutually-exclusive proposal, filed on behalf of Y95 Radio, Inc., seeking the substitution of Channel 263C2 for Channel 237A and modification of the permit of Station KCEZ(FM) at Camden, AR, is denied.

Our determination was reached after comparatively evaluating each proposal to determine which could serve a greater population within the gain areas of their predicted Class C2 service contours. That analysis revealed that the Stamps proposal would serve a significantly larger population. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-40, adopted May 13, 1988, and released June 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments, is amended under Arkansas, by removing Channel 261A at Stamps and adding Channel 263C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14205 Filed 6-22-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-334; RM-5741]

Radio Broadcasting Services; Madera, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 221B1 for Channel 221A at Madera, California, and modifies the Class A license of Station KHOT-FM, in response to a petition filed by Madera Broadcasting, Inc. Reference coordinates utilized for this proposal are those of the petitioner's present transmitter site at 36-57-58 and 120-02-06. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-334, adopted May 12, 1988, and released June 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments, is amended under California by revising Channel 221B1 for Channel 221A at Madera.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14206 Filed 6-22-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-506; RM-5524; RM-5861]

Radio Broadcasting Services; Princeton and Washington, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 263A to Princeton, Indiana, as that community's second local FM service, in response to a petition filed by Randolph V. Bell. Additionally, Channel 300A is allotted to Washington, Indiana, as that community's second local FM service, in response to a petition filed by Dennis Daily. Reference coordinates utilized for the allotment at Princeton, Indiana, are 38-28-11 and 87-33-53, while those to accommodate the Washington, Indiana, allotment are 38-39-55 and 87-13-59. With this action, the proceeding is terminated.

DATES: *Effective* July 25, 1988; the window period for filing applications on Channel 263A at Princeton, Indiana, and on Channel 300A at Washington, Indiana, will open on July 26, 1988, and close on August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530, concerning the allotments. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–506, adopted May 12, 1988, and released June 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments, is amended under Indiana, by adding Princeton, Channel 263A and Washington, Channel 300A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–14207 Filed 6–22–88; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 87–467; RM–5959]

Radio Broadcasting Services; Ennis, Montana

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 254C2 to Ennis, Montana, as that community's first FM broadcast service, in response to a petition filed by Big M Broadcast Associates. The coordinates for this allotment are 45–21–12 and 111–44–06. With this action, this proceeding is terminated.

DATES: Effective July 25, 1988; the window period for filing applications will open on July 26, 1988, and close on August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–467, adopted May 11, 1988, and released June 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Montana is amended by adding Channel 254C2 at Ennis.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–14208 Filed 6–22–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 80467–8110]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this rule to implement Amendment 2 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). Amendment 2 (1) specifies a 10 percent increase in the meat count standard during the months of October, November, December, and January, the primary period when spawning causes reduction in individual meat weight of scallops that have reached harvestable age; and (2) provides a framework regulatory mechanism to change the magnitude and/or the timing of the adjustment of the meat count standard during the spawning season. The purpose of Amendment 2 is to provide regulatory relief to the industry. This rule also makes minor editorial and technical changes to the regulations.

EFFECTIVE DATE: July 22, 1988.

ADDRESS: Copies of the amendment, the environmental assessment, and the regulatory impact review are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Peter Colosi, (Chief, Plan Administration Branch NMFS), 617–281–3600, ext. 232.

SUPPLEMENTARY INFORMATION: The FMP is implemented by regulations appearing at 50 CFR Part 650. The principal objectives of the FMP are (1) restoration of adult stock abundance and age distribution, (2) enhancement of yield per recruit of each stock, and (3) minimization of regulatory and management costs. The primary management measure used to achieve these objectives is the requirement that scallops harvested and shucked at sea must, on average, meet a meat count standard of no more than 30 meats per pound. When the FMP was developed it was believed that scallops grew at a constant rate and upon reaching an age of four years (harvestable age), sufficient growth had occurred to allow the scallops to be harvested at a size consistent with the 30 meat count standard and the objectives of the FMP. Recent scientific studies show that during the fall months, sexually mature scallops (three years old and older) lose meat weight due to spawning activity. This meat weight loss is not regained until late winter when the spawning season is over. The loss in meat weight during the fall months results in significantly fewer scallops of harvestable age that meet the 30 meat count standard.

Amendment 2: (1) implements a 10 percent increase in the meat count standard during October, November, December, and January, the primary period when spawning causes the reduction in individual meat weight of scallops which have reached harvestable age; and (2) provides a framework regulatory mechanism to change the magnitude and/or the timing of the adjustment of the meat count standard during the spawning season. Amendment 2 will provide regulatory relief to the industry.

This rule makes minor technical changes to the regulations by changing all references to the fishery conservation zone (FCZ) to the

exclusive economic zone (EEZ), in accordance with the 1986 amendments to the Magnuson Fishery Conservation and Management Act (Magnuson Act), and by clarifying the definitions of the term *Land*. Non-substantive editorial changes clarify the framework regulatory mechanism.

The notice of availability of Amendment 2 was published on March 30, 1988 (53 FR 4982). A proposed rule to implement the Amendment was published on April 18, 1988 (53 FR 12709). Comments were invited until April 29, 1988. Further background information and the rationale for this rule were given in the proposed rule and are not repeated here.

Comments and Responses

Public comments were received from Mid-Atlantic Fisheries, Inc., Eastern Fisheries, Inc. and the East Coast Fisheries Association. All three support the rulemaking and added additional comments which are discussed below. In addition, the review of the amendment by the Secretary of Commerce through NMFS required by the Magnuson Act raised comments of a technical nature requiring clarification or additional statements in the FMP amendment to ensure accuracy and better understanding of the proposed action. These clarifications and statements do not change the substance of the FMP amendment. The staff of the New England Fishery Management Council (Council), the analysts and drafters of Amendment 2, have addressed these technical/scientific comments.

Public and Other Comments and Responses

Comment: Mid-Atlantic Fisheries, Inc., urged NMFS to consider a standard of 35 meats per pound with a 10 percent tolerance and an additional 10 percent tolerance during spawning, to bring the regulations into alignment with the real harvesting practices in the fishery.

Response: A standard of 35 meats per pound with a 10 percent tolerance results in an effective standard of 38.5 meats per pound during non-spawning periods; an additional 10 percent tolerance during spawning results in a standard of 42.4 meats per pound. This recommendation could not be supported by NMFS because it runs counter to the FMP's management objective of enhancing yield per recruit from the resource. The FMP indicates that, under prevailing exploitation conditions in the sea scallop fishery, an industry average meat count of 30 or 25 meats per pound will result in significantly greater harvestable yield from all resource components compared to a 40 meats per pound standard.

Comment: Eastern Fisheries, Inc. hopes that in the future the Council will abandon the meat count approach in favor of effort control in the fishery. They argue that the marketplace would then become a more effective tool for conservation.

Response: This comment provides an optional direction for future scallop management, and has been forwarded to the Council.

Comment: The East Coast Fisheries Association commented that recent data collection shows a "growing recognition" of a spring scallop spawning period in addition to the fall spawning. The Association asks that the adjustment season not be constrained by the fall period, and that, for greater flexibility, two separate periods (up to six months total) could be considered.

Response: This new information concerning a second spawning period is useful and may be confirmed by current research. It is not possible at this time, however, to eliminate the seasonal constraint for the meat count adjustment period because it is based upon the best scientific information now available. The Council may wish to address this new information in the future.

Comment: The U.S. Coast Guard commented that the resubmitted FMP amendment lacks inclusion of the Coast Guard's safety comments, but does include a discussion of vessel safety.

Response: The Council and NMFS regret this omission. In keeping with present NMFS guidance, any comments henceforth received from the Coast Guard will be included in or appended to any final FMP or amendment submitted for Secretarial review.

Concerns of NMFS' Northeast Fisheries Center and Responses by the Council

Comment: Although the current meat count standard does not explicitly incorporate a seasonal change in meat count, the issue of seasonal adjustments has been considered, analyzed, and discussed by the Council since November 1983.

Response: It is true that the issue of seasonal adjustments to the meat count standard has been discussed by the Council for several years; however, the sea scallop management program, which was implemented in August 1982, adopted a maximum average meat count standard that does not provide for any adjustment for seasonal loss in meat weight. This action is the first to address the seasonality issue.

Comment: The burdens or negative effects on fishermen, as a result of continuing the management program without the seasonal adjustment, should be more formally described.

Response: The FMP amendment identifies a $2.2 million loss in revenue to fishermen in the first year, relative to the revenue that was originally expected, if the preferred alternative is not taken. To offset this loss, fishermen would either have to fish other areas or employ additional fishing effort, incurring additional operating costs in either case.

Comment: The Council asserts that 4-year-old scallops are denied to the fishery until after meat weight recovers following the spawning period. No scallops of any size or age are denied to the fishery at any time under the maximum average meat count standard.

Response: The Council notes that, based upon current data, age 4 sea scallops, during the months of October through January have meat counts exceeding 40 per pound and that age 3 scallops during the same period have meat counts in excess of 100 per pound. In the absence of significant older age classes in the population to make it feasible to mix and still achieve a 30 count trip standard, few age 4 scallops may be legally taken by shuckers until meat weights have recovered after spawning. During the period being addressed, October through January, age 3 scallops are too small to be practically harvested under any mixing schedule (See Figure 1 of Amendment 2).

Comment: Is there any long-term conservation benefit to the resource by leaving some (more) scallops in the ocean?

Response: The long-term economic benefit of "no action" is estimated to be $5.3 million over the next eight years. This represents only one-half of one percent of projected total revenues during this period. The long-term conservation benefit, however, is negligible, inasmuch as most of the underweight scallops have already spawned.

Comment: Any increase in meat count standard will allow enhanced mixing of smaller scallops.

Response: The meat count adjustment simply makes it possible for the fishermen legally to retain the same age cohorts of scallops that they would have been catching had there not been a loss of meat weight.

Comment: Lower yield per scallop in the fall versus higher yield per scallop in late winter/early spring is advantageous to scallopers who are willing to postpone their catch.

Response: Vessels able to work uninterruptedly through the winter months are not willing to postpone

harvesting until spring. Thus, the only way to postpone the harvest would be to close the fishery; this has not been proposed.

Comment: Shouldn't the shell height change seasonally with the meat count?

Response: The intention of the management program is to achieve an average age of entry to the fishery of four years regardless of which fleet sector (shell stockers and shuckers) is harvesting scallops. Shell sizes are not subject to seasonal variation due to spawning. The shell height and meat weight measures are only intended to be compatible in their long-term effect.

Comment: In what way does adjusting the meat count above 30 on a seasonal basis better achieve that objective?

Response: Failure to adjust the average meat count results in an increase in the average age at entry to the fishery which is not consistent with the objectives contemplated in the FMP. Further, the seasonal adjustment promotes compliance with the management measures, which is critical to the success of any fishery management plan. The objective of the FMP is to optimize the social and economic benefits to the Nation. The Council has concluded that the slight loss in conservation benefits is outweighed by the reduced burden on the fishermen and the potential for improved compliance by fishermen with the FMP's regulations.

Comment: Data are not adequately presented in the document to support contentions of foregone catch, inequality among vessels, and promoting non-compliance associated with existing management programs.

Response: Foregone catch is illustrated in Figures 2A and 2B and the associated text of Amendment 2. Inequity among vessels is presented in Table I of Amendment 2, and non-compliance is documented in the public record.

Comment: Preliminary biological data suggest that the long-term biological yield losses associated with the seasonal meat count adjustment, as compared to the status quo, may be underestimated.

Response: Included in the preferred alternative is a flexible regulatory mechanism which facilitates the timely incorporation of the best available scientific information into the management program. As the preliminary data referenced become conclusive, the FMP will be updated accordingly. The Council has sponsored regional efforts to acquire better data on the biology of the sea scallop resource and the conduct of the sea scallop fishery.

Comment: Evidence is not given to support the contention that compliance with scallop regulations is compromised by failure to adopt the seasonal change in the meat count standard.

Response: The Council believes that the erosion of compliance as a consequence of the seasonal decrease in meat weight has been well documented in the public record.

Classification

The Director, Northeast Region, NMFS, has determined that the amendment to be implemented by this rule is consistent with the Magnuson Act, the national standards, and other applicable law.

The Council prepared an environmental assessment (EA) for Amendment 2. The Assistant Administrator for Fisheries, NOAA, concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the EA and finding of no significant impacts may be obtained from the Council at the address above.

The Under Secretary of Commerce, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: June 17, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 650 is amended as follows:

PART 650—[AMENDED]

1. The authority citation for Part 650 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 650.2, the definition of *Land* is revised, to read as follows:

§ 650.2 Definitions.

* * * * *

Land means to begin offloading fish, to offload fish, or to enter port with fish.

* * * * *

§ 650.7 [Amended]

3. In § 650.7(m), the initials "FCZ" are revised to read "EEZ".

4. In § 650.20, in paragraph (a), the reference "and (c)" is added after "(b)" and a new paragraph (c) is added, to read as follows:

§ 650.20 Meat-count and shell-height standards.

* * * * *

(c)(1) The meat count standard in paragraph (a) of this section will be adjusted upward by 10 percent during the months of October through January each year.

(2) The adjustment of the meat count standard specified in paragraph (c)(1) of this section is made to account for the natural reduction of meat weight during and after the spawning season. The corresponding minimum shell height will not be adjusted.

(3) The Regional Director may act to modify the adjustment to the meat count standard during the spawning period, as set forth in the procedures and criteria of § 650.24. Any modification will become the operative spawning adjustment for purposes of paragraph (c)(1) of this section for succeeding years unless it is further modified according to § 650.24.

5. A new § 650.24 is added to read as follows:

§ 650.24 Modification of the spawning season adjustment.

(a) *Procedure.* (1) The Council may request that the Regional Director modify the spawning season adjustment as specified in § 650.20(c)(3), if he makes the findings required by paragraph (b) of this section after considering the information specified in paragraph (c) of this section.

(2) A modification to the spawning season adjustment may not exceed 30 percent of the meat count established under § 650.20(a) and is limited to a time period of up to 6 months beginning no earlier than September 1.

(3) Following a request by the Council for a modification, the Regional Director will:

(i) Provide for public input by holding a hearing in conjunction with a Council meeting at which the matter is discussed; and

(ii) Take into consideration public comments and information regarding the enforcement and administrative implications of any modification.

(4) After consideration of the full record required by this section, the Regional Director may modify the spawning adjustment under this section by publishing a notice in the Federal Register.

(b) *Criteria.* The Regional Director must find that:

(1) New scientific information exists that is significantly different from the information contained in the FMP respecting sea scallop growth and/or spawning activity;

(2) The proposed adjustment is within the ranges of period, starting date, and magnitude set forth in paragraph (a)(2) of this section; and

(3) The proposed adjustment is consistent with the management objectives of the FMP.

(c) *Sources of information.* The Regional Director will consider all available resource and assessment information, especially the most recently completed NMFS resource survey and assessment, when preparing any report or recommendation under this section. He will also consider reports and records maintained by fishermen and made available as a part of the fishery statistics program, other fishery statistics, and any other available information which improves understanding of prevailing conditions of the stock, the fishery, and the industry.

[FR Doc. 88-14199 Filed 6-22-88; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 121
Thursday, June 23, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 273

[Amdt. No. 302]

Food Stamp Program; Employment and Training Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes several corrections and clarifications in Food Stamp Program employment and training (E&T) requirements set forth in Program regulations at 7 CFR 273.7. These changes are necessary to ensure proper interpretation and operation of Program employment and training requirements mandated by the Food Security Act of 1985 (Pub. L. 99-198).

DATES: Comments must be received by August 22, 1988 in order to be assured of consideration.

ADDRESS: Comments should be addressed to Art Foley, Legislation and Work Policy Section, Food and Nutrition Service (FNS), 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 904.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be addressed to Mr. Foley at the above address or by telephone at (703) 756-3389.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Department has classified this rule as non-major. The rule's effect on the economy will be less than $100 million. The rule will have no effect on costs or prices. Competition, investment, productivity, and innovation will remain unaffected. This rule will have an affect on employment in that its goal is to correct and clarify current rules, thereby improving efforts to place food stamp recipients in employment. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule related Notice of 7 CFR Part 3015, Subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, Stat. 1164, September 19, 1980). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program. Potential and current participants will be affected because they will have to fulfill the work requirements established by State agencies under the guidelines set forth in this rulemaking.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements contained in 7 CFR 273.7(o)(6) of this regulation have been approved by the Office of Management and Budget (OMB) under that Act. The OMB approval number for these requirements is 0584-0339.

Background

The Food Security Act of 1985, Pub. L. 99-198, Title XV, 99 Stat. 1566, December 23, 1985, amended the Food Stamp Act of 1977 to require that no later than April 1, 1987, every State agency shall implement an employment and training program designed by the State agency and approved by the Secretary of Agriculture. On December 31, 1986 the Department published a final rule, 51 FR 47378 et seq., which incorporated employment and training program requirements into food stamp regulations. Several technical corrections were made to this rule through a final rulemaking issued April 7, 1987, 52 FR 11022. This rulemaking proposes further changes to the employment and training regulations found at 7 CFR 273.7 of the Food Stamp Program regulations, and corrects a small number of typographical errors discovered in this section of the regulations.

Income and Resources of Sanctioned Non-Heads of Households

Current regulations at 7 CFR 273.7(g)(1) specify that an individual, other than the head of household as defined in 7 CFR 273.1(d), who has refused or failed without good cause to comply with food stamp work requirements imposed by regulation and by the State agency is to be ineligible for the Food Stamp Program for a period of two months and is to be treated as an ineligible household member per 7 CFR 273.1(b)(2). 7 CFR 273.1(b)(2) states that the income and resources of individuals disqualified for refusing to comply with a regulatory requirement, including noncompliance with the work requirements of 7 CFR 273.7, are to be handled in accordance with the provisions of 7 CFR 273.11(c) or (d) as appropriate. 7 CFR 273.11(c) pertains exclusively to the treatment of income and resources of individuals who have been disqualified for intentional Program violations or workfare sanctions and those disqualified for refusal to obtain or provide a Social Security number or for being an ineligible alien. 7 CFR 273.11(d) pertains to the treatment of income and resources of all other nonhousehold members. As individuals sanctioned for work requirement violations are not specifically mentioned in 7 CFR 273.11(c), current regulations can be interpreted to require them to be treated in accordance with the provisions of 7 CFR 273.11(d) which specify that their income and resources shall not be considered available to the household with whom they reside. This was not the Department's intention. Instead the Department believes that households

containing an individual who has been sanctioned for failure to comply with the work requirements of 7 CFR 273.7 should be subject to the same consequences as households containing an individual whose household was sanctioned for failure to comply with a workfare obligation. This rulemaking proposes to count all the income and resources of a household member disqualified for a work program violation as available to this person's household. The rule also proposes clarifications in 7 CFR 273.7(g)(1) that noncompliant household members who join other households as non-heads of household, are to be Program ineligible for two months. This had not been clearly stated in this section of the December 31, 1986 rulemaking (51 FR 47378 *et seq.*).

Head of Household Definition

Current regulations at 7 CFR 273.1(d)(2) permit a household sanctioned for failure to comply with work requirements, to designate the head of household in those instances in which there is no principal source of income in the household. This policy effectively permits households with no principal source of income to designate a member, other than the member(s) who refuses to comply with work requirements, as head of household in sanction situations. Such a situation could result in circumvention of the work requirements. This rule proposes to modify the current regulatory wording at 7 CFR 273.1(d)(2) so as to use whoever was the head of household at the time of the violation in sanction situations rather than permitting the household to make such a designation after the violation has occurred.

7 CFR 273.1(d)(2) applies the concept of principal wage earner as head of household for sanctioning purposes to the provisions of 7 CFR 273.7 (Work Requirement) and 7 CFR 273.22 (Optional Workfare). As required by section 20 of the Food Stamp Act (7 U.S.C. 2829), 7 CFR 273.22 mandates that failure to comply with workfare requirements by any non-exempt household member results in imposition of a sanction against the entire household. Application of the head of household concept to the optional workfare section of the regulations implies that 7 CFR 273.1(d)(2) circumvents the sanction requirements of 7 CFR 273.22. This was not the Department's intent. Rather, application of the head of household definition to the optional workfare regulatory section was to ensure that workfare programs, operated as components of employment and training programs, applied the same definition and sanctions as other employment and training components. This rulemaking proposes amended language for 7 CFR 273.1(d)(2) clarifying this intent. The rule proposes that the principal wage earner as head of household concept is applicable to workfare programs, operated as components of State agency employment and training programs, but is not applicable to optional workfare programs operated under the provisions of 7 CFR 273.22.

Failure to Comply

Current regulations at 7 CFR 273.7(g)(2) specify that failure to comply with a comparable Work Incentive Program (WIN) or unemployment compensation requirement by a household member exempted from food stamp work registration under the provisions of 7 CFR 273.7(b)(1)(iii) or (b)(1)(v) because he was registered for work under WIN or unemployment compensation, is to be treated as failure to comply with the corresponding food stamp requirements. While 7 CFR 273.7(g)(2) specifies only the WIN program, section 6(d)(2) of the Food Stamp Act of 1977 (7 U.S.C. 2015(a)(2)) mandates that failure to comply by any person who is subject to a work registration requirement under Title IV of the Social Security Act, as amended (42 U.S.C. 602), with any such requirements which are comparable to food stamp work registration requirements, triggers food stamp sanctions against that individual or household. Congress did not specify that action was to be taken only against WIN work registrants who fail to comply with requirements which are comparable to food stamp requirements. Rather it clearly intended that all persons subject to any work registration requirements under Title IV of the Social Security Act, such as work supplementation and community work experience program requirements, are to be sanctioned if they fail to comply with such requirements, providing they are comparable to food stamp mandates. As a result, this rule proposes to amend appropriate sections of 7 CFR 273.7 to substitute references to WIN with a phrase pertaining to Title IV work programs in general.

Counting Placements

7 CFR 273.7(o)(2) of current regulations permits State agencies to count persons as placed in an employment and training program for purposes of performance standards, "* * * if the person commences an employment and training component, or fails to comply with employment and training requirements and is denied certification or is sent a notice of adverse action (NOAA) for the noncompliance." The Department's intent in allowing certification denials and NOAAs for failure to comply with E&T requirements to be counted as placements for performance standard purposes, was to recognize and credit State agencies for their efforts in attempting to serve individuals subject to E&T requirements, and for beginning the disqualification process in those instances in which noncompliance occurs subsequent to an individual's commencement of an E&T component. While the Department wishes to continue to recognize State agency efforts in these areas, we believe the current regulations permit individual participants to be counted as "placed" an inordinate number of times in certain situations. This multiple counting of single individuals as placed inflates State agency success rates for performance measurement purposes and, potentially, could raise these rates above 100 percent in certain circumstances. This is contrary to the intent of Congress and the Department in establishing employment and training performance standards.

In an effort to curtail mutliple placement counts of a single individual, the Department is proposing in this rulemaking to restrict the crediting of a placement to one per individual per component. Under this methodology, State agencies may count as placed those individuals who: (1) Are assigned to but refuse to begin an E&T component and are sent a NOAA or denied certification, or (2) actually begin a component. In the first instance, State agencies are credited with efforts to serve individuals by screening and assigning them to an E&T component even though the individual subsequently refuses to comply. In the second instance State agencies receive credit for enrolling individuals in efforts to improve employability through an E&T component. Individuals who subsequently refuse to comply with a component requirement and receive a NOAA will not be counted as placed, as is currently the case, since they will have already been counted when they actually begin the component. Individuals who cure their noncompliance and re-enter a component will also not be counted as placed since they were already counted at the time they commenced the component. This method should simplify E&T data collection and reporting requirements for State agencies while concurrently providing incentives to State agencies to ensure that individuals

commence and remain in a component until completion. This should encourage State agencies to continue attempts to improve the employability of individuals through additional components when prior components have failed to produce employment. The Department believes that this methodology more accurately reflects State agency efforts to place individuals in E&T programs.

Counting the Base of Eligibles

The word "non-exempt" is added to the description of the base of eligibles in 7 CFR 273.7(o)(3) for consistency with the definition of "E&T mandatory participant" published in the December 31, 1986 final rule.

Performance Data Collection

This rule proposes a revision of 7 CFR 273.7(o)(6) for the sake of clarity. This revision would mandate that the sum of the number of volunteers who are placed in a component in the first month, plus the number of non-exempt work registrants is to constitute the first month's base of eligibles. The Department does not intend this revision as a change in policy, and it will not necessitate any change in data collection instruments.

Percentage of Persons to be Placed

Current regulations at 7 CFR 273.(o)(7) specify that 35 percent of E&T mandatory participants shall be placed in an employment and training program in the first quarter of Fiscal Year 1989 and that an average of 35 percent of mandatory participants are to be placed over the remaining three quarters of Fiscal Year 1989. For purposes of clarity, it is proposed that this paragraph be amended to specify that required placement percentages are to be applied to the total of E&T mandatory participants plus placed volunteers for specified performance reporting periods. Additionally, it is proposed that the paragraph be changed to clarify that State agencies must meet a 35 percent performance standard for the second Fiscal Year 1989 reporting period rather than an average percentage.

Two numbers must be considered when computing the number of mandatory participants—the number of work registrants in the State, and the number of work registrants exempted from E&T participation. The largest portion of the base of eligibles (which includes volunteers who have been placed in an E&T component, plus mandatory E&T participants) is derived by subtracting the number of work registrants who are exempt from E&T from the total number of work registrants in the State. It is this count of non-exempt work registrants which is addressed here. Section 273.7(o) provides that as part of the computation of the base of eligibles, State agencies shall count the actual number of work registrants in the first month of the fiscal year (October) and subsequently add to this figure the number of persons newly work registered each month.

Performance standards for Fiscal Year 1989 have been placed at 35 percent for the first quarter and 35 percent for the remainder of the year. This effectively results in two separate accounting periods for the year rather than one. Use of the entire October 1988 actual count of non-exempt work registered individuals in computing the base of eligibles for the first quarter of Fiscal Year 1989 results in State agencies being forced to meet an abnormally inflated standard for that quarter (October count of non-exempt work registered individuals plus newly work registered non-exempt individuals for November and December). This method also inflates the base of eligibles for the second accounting period comprising the second, third and fourth quarters of the fiscal year, by including first quarter cumulative data in counts for these three quarters. To resolve these technical problems, the Department is proposing that the October 1988 count of non-exempt work registrants be prorated over the two Fiscal Year 1989 accounting periods for performance reporting purposes, by assigning one-fourth of the total October 1988 non-exempt count to the first quarter base of eligibles and three-fourths of the October non-exempt count to the second accounting period comprising the second, third and fourth quarters of the fiscal year. New non-exempt work registrants would be added to these prorated October totals in computing the base of eligibles for the two accounting periods. The non-exempt work registrant portion of the first quarter base of eligibles would, therefore, consist of one fourth of the October 1988 count of non-exempt work registrants plus non-exempt persons newly work registered during the months of November and December 1988. The second accountability period base of eligibles would consist of three-fourths of the October 1988 count of non-exempt work registrants plus non-exempt persons newly work registered in the months of January through September 1989. We believe this computational method is far more equitable to State agency efforts designed to meet Fiscal Year 1989 performance standards than that currently in effect. The annual standard accounting method, specified in current regulations, will take effect for Fiscal Year 1990 and beyond.

Minor Corrections

This proposed rulemaking corrects four typographical errors detected in the December 31, 1986 final rulemaking.

Implementation

The Department intends that the provisions of the final rulemaking resulting from the proposals contained in this rulemaking, be implemented by all State agencies no later than 60 days following publication of the final rulemaking.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food Stamps, Grant programs-social programs.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food Stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Part 271 and 273 are amended as follows:

1. The authority citation for Parts 271 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2 the definition of "Placed in an employment and training program" is revised to read as follows:

§ 271.2 Definitions.

* * * * *

"Placed in an employment and training program" means that a State agency may count a person as "placed" in an employment and training program when the individual commences a component, or is assigned to a component but refuses or fails to begin that component and is sent a Notice of Adverse Action. A State agency shall not consider an individual as "placed" in a component more than once per person per component. Assigned persons who has good cause of not beginning an employment and training component shall not be counted as placed. Additionally, persons failing to comply with work registration or voluntary quit requirements shall not be considered as placed.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.1 [Amended]

3. In § 273.1 the first sentence of paragraph (d)(2) is amended by adding the parenthetical phrase "(to the extent that workfare programs, operated under this paragraph, are included as components of State agency employment and training programs)," between the reference to "273.22" and and the word "head"; and the last sentence of paragraph (d)(2) is amended by removing the phrase "the household may designate the head of household." and adding in its place "the household member, documented in the casefile as the head of the household at the time of the violation, shall be considered the head of household."

4. In § 273.7 the last sentence of paragraph (c)(2) is amended by removing the word "Senate's" and adding in its place "State agency's".

5. In § 273.7 the first sentence of paragraph (d)(1)(i)(E) is amended by removing the word "of" and adding the word "or" in its place.

6. In § 273.7 the second sentence of paragraph (f)(1) is amended by removing the word "contracts" and adding the word "contacts" in its place.

7. In § 273.7 the fifth sentence of paragraph (g)(1) is amended by adding the words "ineligible for two months and shall be" between the words "be" and "considered".

8. In § 273.7 paragraph (g)(2) is amended by removing the abbreviation "WIN" wherever it appears, including the title, and substituting in its place the phrase "work requirement under Title IV of the Social Security Act"; in the first sentence of paragraph (g)(2) by adding the word "a" after the word "under" and in paragraph (g)(2)(ii) removing the word "requirement" in the second sentence.

9. In § 273.7 introductory paragraph (h) is amended by removing the second sentence, and by adding two sentences in its place to read as follows:

§ 273.7 Work requirements.

* * * * *

(h) *Ending disqualification.* * * * Eligibility may be reestablished by a household during a disqualification period and the household shall (if otherwise eligible) be permitted to resume participation if the member who caused the disqualification becomes exempt from the work registration requirement (for reasons other than through the exemptions of paragraph (b)(1)(iii) or (b)(1)(v) of this section), is no longer a member of the household or complies with the appropriate requirement listed in this paragraph. An individual who has been disqualified for noncompliance may be permitted to resume participation during the disqualification period (if otherwise eligible) by becoming exempt from work registration (other than by paragraph (b)(1)(iii) or (b)(1)(v) of this section) or by complying with the following appropriate requirement:

* * * * *

10. In § 273.7 paragraph (k)(1) is amended by removing the abbreviation "WIN" in the first sentence and adding in its place the word "work", and by adding the phrase "under title IV of the Social Security Act" between the words "requirements" and "or"; and paragraph (k)(2) is amended by removing the abbreviation "WIN" and adding in its place the phrase "a work requirement under title IV of the Social Security Act".

11. In § 273.7 paragraph (o)(2) is amended by removing the phrase "fails to comply with E&T requirements" in the first sentence and adding in its place the phrase "is assigned to a component but fails to begin that component"; removing the phrase "more than once in the same component" in the eighth sentence and adding in its place the phrase "only at the time of his/her initial commencement of that component"; and removing the words "comply with" and "requirements" in the ninth sentence and adding the words "begin an" and "component", respectively, in their place.

12. In § 273.7 paragraph (o)(3) is amended by adding the words "non-exempt" between the words "all" and "work" in the first sentence and by adding a new sentence at the end of the paragraph; introductory paragraph (o)(5) is amended by removing the word "or" in the last sentence and adding the word "of" in its place; paragraph (o)(5)(ii) is amended by adding a sentence at the end of the paragraph; paragraph (o)(6) is amended by (a) removing the phrase "work registered individuals" in the first sentence and adding the phrase "work registrants in the first month of the fiscal year, according to the number of persons who are exempt from participation and the number who are not exempt from participation." in its place, (b) by adding a new sentence between the first and second sentences, (c) by adding the word "new" between the words "of" and "E&T", the words "registered that month" between "participants" and the second comma, and the words "the number of" between the words "and" and "volunteers" in the second sentence, and (d) by removing the word "should" in the third sentence and adding the word "shall" in its place; and paragraph (o)(7) is amended by removing the word "average" in the first sentence and adding the word "be" in its place. The additions read as follows:

§ 273.7 Work requirements.

* * * * *

(o) *Performance standards.* * * *

(3) * * * For purposes of computing the base of eligibles for the two performance standard reporting periods of Fiscal Year 1989 (First Quarter, and the Second, Third and Fourth Quarters of the fiscal year), the First Quarter base of eligibles is equal to the cumulative total of 25 percent of the October 1988 total of all mandatory participants plus new E&T mandatory participants registered during November and December 1988, plus volunteers placed in E&T components during these same two months; and the Second, Third and Fourth Quarters' base of eligibles is equal to the cumulative total of 75 percent of the October 1988 total of all mandatory participants plus new E&T mandatory participants registered during the months of January through September 1989 inclusive, plus volunteers placed in E&T components during these same nine months.

* * * * *

(5) * * *

(ii) * * * For Fiscal Year 1989, this 10 percent adjustment may be applied to the base of eligibles totals for each reporting period resulting from the computations specified in paragraph (o)(3) of this section.

(6) * * * The sum of the number of volunteers who are placed in a component in that month plus the number of non-exempt work registrants shall constitute the first month's base of eligibles. * * *

* * * * *

§ 273.11 [Amended]

13. In § 273.11 introductory paragraph (c) is amended by adding the phrase "or noncompliance with a work requirement of § 273.7" between the word "violation" and the comma in the first sentence; and paragraph (c)(1) is amended by (a) adding the phrase "and work requirement" between the words "violation" and "disqualification" in the title, (b) by adding the letter "s" to the word "disqualification" in the title, (c) by adding the phrase "noncompliance with a work requirement of § 273.7," between the words "violation" and "or" in the first sentence, and (d) by adding a comma immediately following the word "violation" in the first sentence.

Date: June 16, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88-14182 Filed 6-22-88; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-15-AD]

Airworthiness Directives; Beech Models F33A, F33C, V35B, A36, A36TC, B36TC, 95-B55, 95-B55A, E55, E55A, 58, 58A, 58P, 58PA, 58TC, and 58TCA Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Beech Models F33A, F33C, V35B, A36, A36TC, B36TC, 95-B55, 95-B55A, E55, E55A, 58, 58A, 58P, 58PA, 58TC, and 58TCA airplanes. This AD would require modification and inspection of pilot's and copilot's center seat tracks and the seat attachment to prevent possible failure under emergency landing conditions. Some seat positions were found to be structurally inadequate, and washers required with small diameter nuts may have been omitted. The proposed modifications and inspections would correct this condition.

DATES: Comments must be received on or before August 11, 1988.

ADDRESSES: Beech Service Bulletin Number 2010, Revision 1, dated May 1988, and Service Bulletin Number 2233, dated April 1988, applicable to this AD, may be obtained from Beech Aircraft Corporation, Commercial Service, Dept. 52, P.O. Box 85, Wichita, Kansas 67201-0085, or may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-15-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Federal Aviation Administration, Wichita Aircraft Certification Office, ACE-120W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 88-CE-15-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

During the certification testing of the pilot's and copilot's seats on certain models of the Beech 36 and 58 Series airplanes, failures occurred in the seat track support structure and in the test seat. The seat track support structure was reinforced. Washers were installed under small diameter nuts on the test seat and certification testing was subsequently completed. These tests were conducted for the 1984 models. The stronger seat track support structure was subsequently incorporated into production. These structural failures revealed that airplanes built between 1975 and 1984 were structurally inadequate.

In early 1975 three additional aft positions were added to the pilot and copilot's seat travel. It was with the seats in the most aft of these added positions that the test failures occurred. The previous seat track configuration, prior to 1975, had also been tested with the seat in the position just forward of the three added positions. The seat track structure has design load capability with the seat in this position but not in any position aft. Beech has published Service Bulletin Number 2010, Revision 1, dated May 1988, that specifies inspections of the seat foot assembly for the presence of the washer and instructions to fill the three aft seat position holes to prevent their usage. Service Bulletin Number 2233, dated April 1988, has been developed by Beech as an optional kit which reinforces the seat track structure and provides a means of restoring the full seat travel. Although there have been no field reports of seat or seat track failures, the structure does not comply with regulation strength requirements. Therefore, to prevent possible crew injury due to seat failure during an emergency or crash landing, an AD is proposed that would require compliance with Beech Service Bulletin Number 2010 or as an option installation of the kit provided in Beech Service Bulletin Number 2233. Since the condition described is likely to exist or develop in other Beech models of the same design, the AD would require filling the three aft seat positioning holes in the center seat track for the pilot's and copilot's seats, or installation of seat track reinforcement, and inspection to determine proper installation of washers on the seat frame assembly.

The FAA has determined there are approximately 4000 airplanes affected by the proposed AD. The cost of modifying these airplanes in the proposed AD is estimated to be $90.00 per airplane. The total cost is estimated to be $360,000 to the private sector. The cost of this modification will not have a significant economic impact on the private sector.

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory

evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to the Beech airplanes listed below, certificated in any category:

Model	Serial No.	Compliance paragraph
F33A	CE–621 through CE–1024.	(b)
F33C	CJ–112 through CJ–155	(b)
V35B	D–9830 through D–10403.	(b)
A36	E–632 through E–789	(a)
	E–790 through E–1945	(a) (b)
	E–1947 through E–2103	(a) (b)
	E–2105 through E–2110	(a) (b)
A36TC, B36TC.	EA–2 through EA–319	(a) (b)
	EA–321 through EA–388	(a) (b)
95–B55, 95–B55A.	TC–1918 through TC–2456.	(b)
E–55, E–55A.	TE–1071 through TE–1201.	(b)
58, 58A	TH–579 through TH–702	(a)
	TH–703 through TH–1388.	(a) (b)
	TH–1390 through TH–1395.	(a) (b)
58P, 58PA	TJ–12 through TJ–27	(a)
	TJ–28 through TJ–435	(a) (b)
	TJ–437 through TJ–443	(a) (b)
58TC, 58TCA	TK–1, TK–2	(a)
	TK–3 through TK–146	(a) (b)
	TK–148 through TK–150	(a) (b)

Compliance: Required within 100 hours time-in-service after the effective date of this AD unless already accomplished.

To prevent failure of the pilot's and copilot's seat attachment during an emergency landing condition, accomplish the following.

(a) For the airplanes identified in Table I as requiring Compliance Paragraph (a):

Fill the three aft seat positioning holes in the center seat tracks of the pilot and copilot seats in accordance with Beech Service Bulletin Number 2010, Revision 1, dated May 1988. The seat track reinforcement provided in Beech Service Bulletin Number 2233, dated April 1988, may be installed in lieu of filling these holes.

(b) For the airplanes identified in Table I as requiring Compliance Paragraph (b):

(1) Inspect the aft bolt to insure that an AN960–10 washer has been installed under the nut. If a washer has been installed and the provisions of paragraph (a) have been completed, if applicable, the airplane may be returned to service.

(2) If no washer is found per paragraph (b)(1) above, prior to further flight install an AN960–10 washer under the nut, on the lower aft bolt as shown in Service Bulletin No. 2010, Revision 1, dated May 1988. This applies to both the left and right hand sides of the pilot and copilot seat frame assemblies.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beechcraft Aero and Aviation Centers; Beech Aircraft Corporation, Commercial Services, Dept. 52, P.O. Box 85, Wichita, Kansas 67201–0085, or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 10, 1988.

Barry D. Clements,

Acting Director, Central Region.

[FR Doc. 88–14169 Filed 6–22–88; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 87–CE–29–AD]

Airworthiness Directive; SIAI-Marchetti S.p.A., Models F260, F260B, F260C, and F260D Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) Docket 87–CE–29–AD, applicable to certain SIAI-Marchetti S.p.A., Models F260, F260B, F260C, and F260D airplanes, which was published in the **Federal Register** on October 1, 1987 (52 FR 36787). The NPRM proposed to adopt an Airworthiness Directive (AD) that would have required inspections, and if necessary, modification of the main wing spar. As a result of the subsequent evaluation of public comments to the NPRM and a complete technical reevaluation of the proposal, the FAA is withdrawing this NPRM.

FOR FURTHER INFORMATION CONTACT: Mr. M. Dearing, Brussels, Aircraft Certification Staff, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30, extension 2710; or Mr. J. P. Dow, Sr., FAA, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspections, and if necessary, modification of the main wing spar of SIAI-Marchetti S.p.A., Models F260, F260B, F260C, and F260D airplanes was published in the **Federal Register** on October 1, 1987 (52 FR 36787). An extension of the comment period appeared in the **Federal Register** on December 21, 1987 (542 FR 48274). The proposal followed the manufacturer's issuance of Service Bulletin (S/B) No. 260–B50, dated November 12, 1986, and because the Registro Aeronautico Italiano (RAI), who has the responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy, classified this S/B as mandatory and subsequently issued RAI AD 86–199/F260–32, dated December 22, 1986, on the same subject. The FAA reviewed SIAI-Marchetti S/B No. 260–B50 and RAI AD 86–199/F260–32 and believed the condition addressed therein to be an unsafe condition.

Interested persons have been afforded an opportunity to comment on the proposal. Two SIAI-Marchetti S.p.A. F260 owners and the sole U.S. SIAI-Marchetti agent responded, all three opposed the adoption of the proposal.

The comments focused on the issues that follow:

1. There has never been an inflight failure of an SF260 (F260) airplane.

2. The need for adequate inspection of civil aircraft including spar webs is found in FAR 43. The cracks which have been detected were found by these existing specified inspections.

3. The SIAI-Marchetti inspection guide requires inspection of the wings, attaching devices, spars, and components during 100 hour and annual inspections.

4. The airplanes in which the cracks were found were high time airplanes used for military training at higher weights and configurations including

external stores not likely found in U.S. civil operation.

The more severe loading found in the military and the more abusive operation of flight training is not expected to exist in the U.S. fleet.

5. There is not a demonstrated hazard to safety even in the most heavily used airplanes with existing cracks.

6. Symmetrical inflight loads will not apparently result in adverse crack activity.

7. The NPRM inspection cycle is substantially more frequent than the manufacturer's inspection cycle.

8. There is reason to doubt that the application of the modification kit, costing $1,162 plus labor, will prevent cracks from initiating or propagating.

After reviewing the comments and factors cited above, FAA has now determined that the conditions addressed by SIAI-Marchetti S/B No. 260–B50, dated November 12, 1986, and RAI AD 86–199/F260–32, dated December 22, 2986, do not meet the applicability requirements of § 39.1 of the FAR. Therefore, the proposed action is unnecessary and the NPRM is being withdrawn.

Withdrawal of Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration withdraws a proposal to amend § 39.13 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. NPRM Docket No. 87–CE–29–AD, published in the **Federal Register** on October 1, 1987 (52 FR 36787), is withdrawn.

Issued in Kansas City, Missouri, on June 10, 1988.

Barry D. Clements,

Acting Director, Central Region.

[FR Doc. 88–14170 Filed 6–22–88; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 88–ASO–1]

Proposed Alteration of VOR Federal Airway; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V–441 by extending that airway from Ocala, FL, to Savannah, GA. The extension of V–441 would allow en route flight operations to bypass the congested airspace in the vicinity of Jacksonville, FL. This action would improve the flow of traffic in that area, reduce controller workload and aid flight planning.

DATES: Comments must be received on or before July 28, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 88–ASO–1, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekadays, except Federal holdays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW. Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comment a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–ASO–1." The postcard wil be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to extend VOR Federal Airway V–441 from Ocala, FL, to Savannah, GA, via a west dogleg. This extension would permit traffic to bypass the congested airspace in the vicinity of Jacksonville, FL, including the Cecil Field Naval Air Station Complex and restricted areas. The proposed extension would provide controlled airspace in an area where radar vectors are normally provided. This action would reduce controller work, aid flight planning and reduce en route delays. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-441 [Amended]

By removing the words "to Ocala." and substituting the words "Ocala; Gainesville, FL; INT Gainesville 017°T(016°M) and Brunswick, GA, 223°T(227°M) radials; Brunswick; INT Brunswick 052°T(056°M) and Savannah, GA, 180°T(181°M) radials; to Savannah."

Issued in Washington, DC, On June 8, 1988.

Temple H. Johnson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-14171 Filed 6-22-88; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-25801 File No. S7-11-88]

Registration Requirements for Foreign Broker-Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is issuing for comment a staff interpretive statement regarding the applicability of U.S. broker-dealer registration requirements to foreign entities engaged in securities activities involving U.S. investors. This staff position is published for comment preparatory to publishing a Commission interpretive statement on this subject. In addition, the Commission is publishing a proposed rule that would exempt from broker-dealer registration foreign entities that deal with specified U.S. persons under limited conditions. The proposed rule is developed from previous staff interpretive positions. The Commission is taking these actions in response to the cross-border activities of foreign broker-dealers.

DATE: Comments should be submitted by September 15, 1988.

ADDRESSES: Interested persons should submit three copies of their views to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6-9, Washington, DC 20549, and should refer to File No. S7-11-88. All submissions will be available for public inspection at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby, Chief Counsel ((202) 272-2844), or John Polanin, Jr., Attorney ((202) 272-2848), Office of Legal Policy, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") generally requires that any broker [1] or dealer [2] using the mails or any means or instrumentality of interstate commerce (referred to as the jurisdictional means) [3] must register as a broker-dealer with the Commission. From time to time, foreign entities involved in a variety of securities activities have requested no-action and interpretive advice from the staff of the Division of Market Regulation ("staff") regarding whether certain international securities activities required broker-dealer registration with the Commission. The recent expansion and increased complexity of the world's securities markets have resulted in a significant increase in the number of inquiries that the staff has received. Accordingly, the Commission is concerned that foreign-based broker-dealers, foreign affiliates of U.S. broker-dealers, and other foreign financial institutions [4] may not clearly understand the application of U.S. broker-dealer registration requirements. Part II of this release reviews past interpretive and exemptive positions regarding the necessity for broker-dealer registration [5] by foreign entities. Part III provides a staff summary of its current positions, and requests comment on the Commission's proposed adoption of these positions as its own interpretive views. Part IV of the release solicits comment on a proposed rule, developed from these positions, that would exempt from the broker-dealer registration requirements foreign broker-dealers that engage in securities transactions with certain non-U.S. persons, or with specified U.S. institutional investors under limited conditions.

---

[1] Section 3(a)(4) of the Exchange Act defines "broker" as "any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank." 15 U.S.C. 78c(a)(4). The term "bank," however, is limited by section 3(a)(6) of the Exchange Act, 15 U.S.C. 78c(a)(6), to banks directly regulated by U.S. state or federal bank regulators, *see United States v. Weisscredit Banca Commerciale E D'Investimenti*, 325 F. Supp. 1384 (S.D.N.Y. 1971) (section 3(a)(6) includes only domestic institutions for purposes of Regulation T), and thus foreign banks that act as brokers or dealers within the jurisdiction of the United States, are subject to U.S. broker-dealer registration requirements. *See* letter from Michael Saperstein, Assistant Chief Counsel, Division of Market Regulation, SEC, to Edward Labaton, Sheib, Shatzkin & Cooper (July 29, 1971).

[2] Section 3(a)(5) of the Exchange Act, 15 U.S.C. 78c(a)(5), defines "dealer" as: any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys and sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business. Although by its terms this definition is broad, it has been interpreted to exclude various activities, such as buying and selling for investment, *see, e.g.*, letter from Robert L.D. Colby, Chief Counsel, Division of Market Regulation, SEC, to Elizabeth J. Tolmach, Esq., Caplin & Drysdale (Apr. 2, 1987) (United Savings Association of Texas) (no-action position on government securities dealer registration), not within the intent of the definition. In addition, the registration requirements of section 15(a) of the Exchange Act exclude from registration additional categories of persons, such as intrastate broker-dealers. *Cf.* Douglas and Bates, *Some Effects of the Securities Act Upon Investment Banking*, 1 U. of Chi. L. Rev. 283, 302 n.68 (1934); *The Federal Securities Act of 1933*, 43 Yale L.J. 171, 206 n.189 (1933) ("rule of reason" should apply to similarly broad dealer definition in section 2(12) of Securities Act of 1933 ("Securities Act"), 15 U.S.C. 77b(12)).

[3] Specifically, section 15(a)(1), 15 U.S.C. 78o(a)(1), refers to: use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) * * *.

Section 3(a)(17) defines "interstate commerce" to include "trade, commerce, transporation, or communiciation * * * between any foreign country and any State * * *." 15 U.S.C. 78c(a)(17).

[4] These entities are referred to collectively herein as foreign broker-dealers.

[5] The staff's positions regarding broker-dealer registration of foreign persons selling securities to U.S. persons similarly would apply to registration of government securities brokers or government securities dealers under section 15C of the Exchange Act, 15 U.S.C. 78o-5, and registration of municipal securities dealers under section 15B of the Exchange Act, 15 U.S.C. 78o-4.

II. Application of the Broker-Dealer Registration Requirements to Foreign Broker-Dealers

In Securities Act Release No. 4708 ("Release 4708"),[6] the Commission articulated the conditions under which a foreign underwriter of a U.S. issuer's foreign offering of securities would not be required to register as a broker-dealer under section 15(a) of the Exchange Act.[7] The Commission indicated that registration was not required if a foreign broker-dealer limited its participation in a foreign offering of U.S. securities or the foreign part of a multinational offering of such securities to: (1) Selling securities outside the United States to non-U.S. persons, and (2) participating in an underwriting syndicate in which all U.S. activities, such as sales to selling group members, stabilization, over-allotment, and group sales, were carried out for the syndicate exclusively by a managing underwriter or underwriters registered with the Commission.

Historically, the staff has followed principles derived from Release 4708 in evaluating the need for registration of entitites engaged in securities activities primarily outside the United States and involving non-U.S. investors. The staff has not required broker-dealer registration where foreign firms [8] or U.S. firms [9] sold newly-issued U.S. securities exclusively to persons other than U.S. persons outside the United States. The staff also has taken no-action positions concerning the sale of U.S. securities by foreign broker-dealers to foreign investors outside the United States, where the securities were obtained in U.S. secondary markets through a registered broker-dealer.[10]

The staff has taken a different view of securities transactions between foreign broker-dealers and U.S. investors. Traditionally, the staff has insisted upon broker-dealer registration of foreign firms dealing with U.S. investors. As the staff indicated in 1967:

> [W]hile we sometimes raise no objection if a broker-dealer, without registration, buys securities in the United States and sells them outside the jurisdiction of the United States to persons other than United States nationals[,] we would not be willing to take such a no-action position as to broker-dealer registration if a broker-dealer sells any securities, even foreign securities, to United States nationals.[11]

Most of the early staff letters required broker-dealer registration of foreign firms executing transactions for U.S. persons, without differentiating between solicited and unsolicited trades; however, the activities described in the letters generally involved solicitation of investors. Thus, where the foreign broker-dealer engaged in transactions with U.S. investors that arguably involved some form of solicitation, the staff historically has declined to give assurances that no action would be recommended if broker-dealer registration requirements were not met.[12] Activities that the staff traditionally has viewed as involving solicitation include: running investment seminars for U.S. investors, or advertising in U.S. newspapers the activities of foreign broker-dealers and their willingness to trade foreign securities; [13] publishing quotes in the United States; [14] and providing advice about foreign securities (particularly where the advice is provided in return for brokerage commissions on transactions [15] placed with the foreign broker-dealer).[16] In addition, in several instances the Commission and staff specifically have conditioned relief from broker-dealer registration requirements specifically on a firm not soliciting or effecting trades for U.S. persons, wherever located.[17]

---

[6] 29 FR 9828 (July 9, 1964), codified at 17 CFR 231. This release was denominated also as Securities Exchange Act Release No. 7366. It addressed both the need for registration under the Securities Act of securities issued abroad, and registration under the Exchange Act of foreign broker-dealers participating in foreign offering of securities of U.S. issuers.

[7] Release 4708 was issued in response to a recommendation by the Presidential Task Force on Promoting Increased Foreign Investment in United States Corporate Securities and Increased Foreign Financing for United States Corporations Operating Abroad ("Task Force"). The Task Force was charged with: " " " developing programs for the increased foreign marketing of domestic securities, with particular emphasis on the securities of United States companies operating abroad, for a review of governmental and private activities adversely affecting such financing, and for an appraisal of the various barriers to such financing remaining in major foreign capital markets.

The Task Force submitted a report to the President in 1964 recommending that, among other things, the Commission publish a release setting forth its position on Securities Act registration for U.S. issuer's foreign offerings and Exchange Act registration for foreign underwriters participating in distributions of U.S. issuers' securities exclusively to nonresidents of the United States.

[8] Letter from Robert Block, Chief Counsel, Division of Treding and Markets, SEC, to Walter Freedman, Esq., Freedman, Levy, Kroll & Simonds (July 31, 1968) (New York Hanseatic Corporation); letter from Robert Block, Chief Counsel, Division of Trading and Markets, SEC, to Irving Galpeer, Esq. Jaffin, Schaeider, Kimmel & Galpeer (June 14, 1961) (Ultoomel & Assudamal Co.).

[9] *See, e.g.*, letter from Valerie S. Golden, Attorney, Divison of Market Regulation, SEC, to Peter M. Gunnar, Esq., Gunnar & Associates P.C. (July 28, 1983) (Williams Island Associates). In isolated instances, the staff also has accorded no-action treatment to U.S. entities engaged in similar activities from within the United States. *See, e.g.*, letter from Amy Natterson Kroll, Attorney, Division of Market Regulation, SEC, to Kevin McMahon, Esq., Jones, Grey & Bayley, P.S. (Aug. 1, 1986) (Barons Mortgage Association). However, as discussed *infra* pp. 24–26, the staff believes that all U.S. persons selling U.S. securities from within this country to foreigners living abroad should satisfy U.S. broker-dealer registration requirements.

[10] *See, e.g.*, letter from Francis R. Snodgrass, Associate Director, Division of Market Regulation, SEC, to M. David Hyman, Director of Legal & Compliance Department, Bear, Stearns & Co. (Jan. 7, 1976) (Bear, Sterns/Sun Hung Kai) (Bear, Stearns & Co., a registered broker-dealer, executed trades on a fully-disclosed basis on U.S. exchanges and the over-the-counter market for customers of Sun Hung Kai Securities Ltd., a Hong Kong Stock Exchange member. None of the customers for whom Bear, Stearns, & Co. carried accounts were U.S. customers); letter from Ezra Weiss, Associate Chief Counsel, Division of Trading and Markets, SEC, to Shearman & Sterling (Oct. 25, 1968) (Hill, Samuels & Co.); letter from Robert Block, Chief Counsel, Division of Trading and Markets, SEC, to Irving Galpeer, Galpeer & Cooper (May 14, 1968) (U.S. Investment Co. Ltd); letter from Thomas Rae, Assistant Director, Division of Trading and Markets, SEC, to C.W. McAlpin, President, New Providence Securities (June 30, 1957).

[11] Letter from Robert Block, Chief Counsel, Division of Trading and Markets, SEC, to Roberto Luna (Feb. 21, 1967).

[12] *See* letter from David Romanski, Attorney, Division of Market Regulation, SEC, to Hugh Seymour, Hoare & Govett, Ltd. (Sept. 28, 1973) (Hoare & Govett); *see also* letter from Michael Saperstein, Associate Director, Division of Market Regulation, SEC, to Irving Marmer, Esq. [1972–73 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 79,283 (Dec. 4, 1972) (Marmer) (a foreign entity distributing foreign stock quotations to U.S. subscribers and receiving buy and sell orders from the subscribers, to be executed on foreign securities exchanges, was denied a no-action position). Foreign broker-dealers that do not solicit U.S. persons either in the United States or abroad have been granted no-action positions. *See, e.g.*, letter from Edward L. Pittman, Attorney, Division of Market Regulation, SEC, to Sydney H. Mendelsohn, Esq., Finley, Kumble, Wagner, Heine, Underberg, Manley & Casey (Nov. 8, 1985) (Wood Gundy). Commissioner Loomis also expressed this position as general policy in a 1977 letter, *see* letter from Philip A. Loomis, Commissioner, SEC, to Charles D. Ellis, President, Greenwich Research Associates, (Apr. 15, 1977), and it recently was reiterated in a letter responding to a Congressional inquiry. Letter from Robert L.D. Colby, Chief Counsel, Division of Market Regulation, SEC, to Senator William Proxmire, Chairman, Committee on Banking, Housing and Urban Affairs, United States Senate (Aug. 13, 1987).

[13] Hoare & Govett letter, *supra* note 12.

[14] Marmer letter, *supra* note 12.

[15] See discussion of "soft dollar" arrangements *infra* p. 31. *See also* Securities Exchange Act Release No. 23170 (Apr. 23, 1986), 51 FR 16004 (interpretive release concerning Exchange Act section 28(e), 15 U.S.C. 78bb(e)).

[16] Letter from Eric Thompson, Attorney, Division of Market Regulation, SEC, to Richard D. Haynes, Esq., Haynes and Boone (Aug. 23, 1974) (Wood McKenzie); letter from Francis R. Snodgrass, Chief Counsel, Division of Market Regulation, SEC, to Richard D. Haynes, Esq., Haynes and Boone (Mar. 10, 1975) (Wood McKenzie).

[17] *See, e.g.*, Release 4708; Hill, Samuels letter, *supra* note 10; New York Hanseatic Corporation letter, *supra* note 8; letter from Robert Block, Chief Counsel, Division of Trading and Markets, SEC, to R. Luna (Mar. 23, 1967); Luna letter, *supra* note 11

More recently, the staff has granted several no-action requests to foreign broker-dealers interested in developing contacts with U.S. persons, generally institutions, through the medium of registered broker-dealer affiliates. Generally, these no-action letters required the registered broker-dealer to assume responsibility for all U.S. persons' accounts, including taking orders directly from the U.S. persons, holding the accounts, confirming the trades, and maintaining all books and records on transactions for the U.S. persons. In one letter, a U.K. broker-dealer provided U.S. institutional investors with research on foreign securities through its registered U.S. broker-dealer affiliate, with the research identified as having been prepared by the U.K. broker-dealer.[18] The U.S. broker-dealer was fully responsible for executing and confirming any resulting orders and for all other aspects of the U.S. person's account.

In another recent no-action letter, a registered U.S. broker-dealer affiliate of a U.S. bank holding company acted as an intermediary between a foreign broker-dealer affiliate of the bank holding company and U.S. institutional investors that received research from that foreign affiliate.[19] In the event that a U.S. institutional investor receiving the research contacted the foreign broker-dealer, a registered representative of the U.S. affiliate would participate throughout all conversations between the U.S. investor and the foreign broker-dealer. Any orders resulting from these conversations would be executed by the U.S. broker-dealer affiliate, and the U.S. broker-dealer would handle all aspects of the U.S. institutional investors' accounts.[20]

The staff also has adopted temporary no-action positions where market maker quotations collected and published by a foreign exchange are distributed in this country. In one instance, the National Association of Securities Dealers, Inc. ("NASD") and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. ("ISE") (formerly The Stock Exchange, London, England) developed a pilot program linking the NASD's NASDAQ[21] and the ISE's SEAQ[22] electronic quotation systems.[23] This program provided that NASDAQ would carry SEAQ information on selected SEAQ securities, and vice vera, with the information exchanged consisting of individual market maker quotations in these securities and a listing of the market makers' names and telephone numbers. Although the staff stated that substantial arguments could be made that the foreign market makers whose quotes were displayed in the United States through the facilities of the ISE were attempting to effect transactions in securities for purposes of U.S. broker-dealer registration provisions,[24] the staff granted the NASD's and ISE's request for a temporary no-action position regarding the pilot NASD/ISE linkage program.[25]

The staff accorded a parallel temporary no-action position to the ISE regarding the dissemination of SEAQ quotation information in the United States through the ISE's own information vendor, TOPIC.[26] Similarly, the staff issued a no-action letter regarding a pilot program providing for an exchange of quotations between NASDAQ and the Singapore Stock Exchange.[27] These no-action positions were intended to facilitates U.S. availability of up-to-date information about foreign market conditions. In adopting these positions, the staff emphasized that any activities by the market makers resulting in substantial U.S. contacts or involving solicitation of U.S. investors, other than passive dissemination of the market makers' quotes by their marketplace and the execution of trades that resulted, were beyond the scope of the no-action positions.[28]

In 1986 the Commission also issued an order exempting several related foreign broker-dealers from U.S. broker-dealer registration requirements, despite the fact that the foreign broker-dealers indirectly engaged in dealer activity in the United States.[29] The foreign broker-dealers were owned by Citicorp, a U.S. bank holding company. Citicorp proposed to purchase a U.S. affiliate of the foreign broker-dealers through Citibank, its U.S. bank subsidiary. The U.S. affiliate was a registered U.S. broker-dealer and active market maker in NASDAQ. Because the Glass-Steagall Act prevented Citibank from owning a market marker,[30] the foreign broker-dealers entered into a contractual agreement with the U.S. affiliate that called for the foreign broker-dealers to provide standing orders to buy and sell the securities in which the U.S. affiliate had previously acted as a market

---

[18] Letter from Kerry F. Hemond, Attorney, Division of Market Regulation, SEC, to Reid L. Ashinoff, Esq., Ashinoff, Ross & Goldman (Aug. 26, 1985) (Smith New Court/Scott Goff) (a representative of the U.K. broker-dealer was employed in the United States as a registered representative of the U.S. affiliate to answer questions concerning the research. Any resulting orders were taken by the U.S. affiliate and executed on an omnibus basis with the U.K. broker-dealer. The exact nature of the U.S. institutional customers was not defined).

[19] Letter from Amy Natterson Kroll, Attorney, Division of Market Regulation, SEC, to Frank Puleo, Esq., Milbank, Tweed, Hedley & McCloy (July 28, 1987) (Chase Capital Markets US) (the exact nature of the U.S. institutional investors was not defined).

[20] Direct contacts between U.S. investors receiving research and the foreign broker-dealer would be initiated only by the U.S. investors. The foreign broker-dealer would continue to accept unsolicited orders directly from U.S. investors other than those receiving research or otherwise solicited.

[21] National Association of Securities Dealers Automated Qutations system.

[22] Stock Exchange Automated Quotations system.

[23] *See* Securities Exchange Act Release No. 23158 (Apr. 21, 1986), 51 FR 15989, in which the Commission approved a six-month pilot program for the NASD/ISE link. After being extended for brief, interim time periods, the pilot program now has been extended to October 2, 1989. Securities Exchange Act Release No. 24979 (Oct. 2, 1987), 51 FR 37684.

[24] Letter from Robert L.D. Colby, Deputy Chief Counsel, Division of Market Regulation, SEC, to Richard B. Smith, Esq., Davis, Polk & Wardwell (July 3, 1986) (NASD/ISE).

[25] *Id.*; letter from Mary Chamberlin, Chief Counsel, Division of Market Regulation, SEC, to Frank J. Wilson, General Counsel, NASD (May 7, 1986) (NASD/ISE).

[26] Letter from Robert L.D. Colby, Chief Counsel, Division of Market Regulation, SEC, to Richard B. Smith, Esq., Davis, Polk & Wardwell (Nov. 28, 1986). Both the TOPIC and the NASD/ISE no-action positions now have been extended until the end of the pilot program on October 2, 1989, as described in note 23 *supra*. Letter from Amy Natterson Kroll, Attorney, Division of Market Regulation, SEC, to Richard B. Smith, Esq., Davis, Polk & Wardwell (Dec. 23, 1987); letter from Robert L.D. Colby, Chief Counsel, Division of Market Regulation, SEC, to Frank J. Wilson, General Counsel, NASD (Feb. 17, 1988).

[27] Letter from Amy Natterson Kroll, Attorney, Division of Market Regulation, SEC, to Frank J. Wilson, General Counsel, NASD (Dec. 11, 1987) (NASD/SSE). *See also* Securities Exchange Act Release No. 25457 (Mar. 14, 1988), 53 FR 9156.

[28] *See, e.g.*, NASD/ISE letters, *supra* notes 24, 25. Although trades could occur as a result of direct contact between the foreign market makers and NASDAQ Level 2 and 3 subscribers, such subscribers are primarily registered broker-dealers. The extended pilot program now has been limited to Level 3.

[29] Letter from Jonathan Katz, Secretary, SEC, to Marcia MacHarg, Esq., Debevoise & Plimpton (Aug. 13, 1986) (Vickers da Costa/Citicorp). Section 15(a)(2) of the Exchange Act, 15 U.S.C. 78o(a)(2), authorizes the Commission to exempt any broker, dealer, or class thereof, conditionally or unconditionally, from the broker-dealer registration requirements, consistent with the public interest and the protection of investors.

[30] The Glass-Steagall Act prohibits a bank from dealing in most corporate securities, and limits a bank's non-dealer securities activities to selling securities "without recourse, solely upon the order, and for the account of, customers * * *." 12 U.S.C. 24. In addition, a bank is prohibited from associating with any entity primarily engaged in the business of "issuing, underwriting, selling or distributing * * *" securities. 12 U.S.C. 378.

maker.[31] The U.S. affiliate's activities would be limited to executing, on a riskless principal basis, any orders received from U.S. customers against these orders.[32]

In the exemption letter, the Commission allowed the foreign broker-dealers to buy and sell simultaneously on a continuing basis through the U.S. affiliate without registering in the United States as broker-dealers. However, the Commission elicited a number of representations to provide additional regulatory safeguards. The foreign broker-dealers' control over the price and size of their standing orders was limited in order to give the U.S. affiliate some discretion in its trading activities. The U.S. affiliate also agreed to satisfy additional net capital requirements intended to increase its ability to meet its settlement obligations upon failure of the foreign broker-dealers. In addition, Citicorp represented that information regarding the trading activities of the foreign broker-dealers would be made available to the Commission in connection with any investigation, and that it would attempt to obtain customer consent to release of information concerning their trading, if requested. Finally, Citicorp agreed that it would be designated as the foreign broker-dealers' agent for service of process in any proceeding or other action involving the foreign broker-dealers.[33]

III. Summary of Current Staff Interpretive Positions and Request for Comments on These Positions

The world's securities markets rapidly are becoming international in scope. Multinational offerings have become commonplace,[34] linkages are developing between trading markets,[35] and many U.S. and foreign broker-dealers are developing an international business, establishing offices throughout the world. Investor interest in trading in world financial markets has become widespread. Institutional investors, such as investment companies, pension funds, and major commercial banks, in particular, are active on an international basis.

As U.S. institutions increasingly invest in securities whose primary market is outside the United States, the ability of these institutions to obtain ready access to foreign markets has grown in importance. Foreign broker-dealers may offer valuable services to these U.S. investors. Foreign brokerdealers often provide opportunities to execute trades quickly in a wide range of foreign securities markets. Foreign brokerdealers also make available research reports concerning foreign companies, industries, and market environments that are major sources of information for U.S. institutional investors. In addition, they act as a source of market quotations on securities trading in foreign markets.

Notwithstanding the important services that may be provided by foreign broker-dealers, the Commission continues to believe that broker-dealer registration is necessary for foreign entities engaging in securities transactions directly with U.S. persons in U.S. markets. Registration of market professionals is a key element in the federal statutory scheme and plays a significant role in protecting investors. It promotes baseline levels of integrity among broker-dealers and their personnel dealing with investors, through statutory disqualification provisions and the Commission's disciplinary authority; retention of sufficient capital to operate safely, through Commission net capital requirements; and maintenance of adequate competency levels, through self-regulatory organizations ("SRO") qualification requirements. In addition, registration brings broker-dealer firms under extensive recordkeeping and reporting obligations,[36] special antifraud rules, and the Commission's broad enforcement authority over broker-dealers. That authority, in turn, helps assure that investors in the U.S. securities markets are protected by the statutory and regulatory provisions governing the U.S. securities industry.[37] Moreover, the Commission's financial supervision of all entities participating in the interdependent network of securities professionals contributes to the financial soundness of this nation's securities markets.

It is well established that, if a foreign broker-dealer forms a branch or an affiliate in the United States to provide services to U.S. persons, whether citizens or resident aliens, the U.S. branch of affiliate and its associated personnel must comply with the provisions of the Exchange Act. In particular, if the foreign broker-dealer establishes a branch, the regulatory system governing U.S. broker-dealers would apply to the entire entity. If the foreign broker-dealer establishes an affiliate, the affiliate must be registered as a broker-dealer,[38] and its personnel

---

[31] Thus, the U.S. affiliate's quotes in NASDAQ always would reflect a previously entered firm order from the foreign broker-dealers.

[32] This arrangement was approved by the Comptroller of the Currency. Letter from Judith A. Walter, Senior Deputy Comptroller, to Ellis E. Bradford, Vice President, Citibank, N.A. (June 13, 1986).

[33] The foreign broker-dealers also limited their securities activities in the United States to those enumerated in the letter, and Citicorp represented that the foreign broker-dealers would not engage in any securities business with U.S. citizens.

[34] *See Internationalization of the Securities Markets*, Report of the Staff of the U.S. Securities and Exchange Commission to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce, at III-43 to III-53 (July 27, 1987) ("Report on Internationalization").

[35] Since 1985, the Commission has approved several linkages between U.S. and foreign exchanges. These include the Montreal Stock Exchange/Boston Stock Exchange link, the American Stock Exchange/Toronto Stock Exchange link, and the Midwest Stock Exchange/Toronto Stock Exchange link. *See* Report on Internationalization at V-49 to V-57, in which the linkages are discussed extensively, including their level of usage and the conditions under which they were approved.

[36] The Commission has adopted a rule that establishes requirements for U.S. maintenance of records by non-resident registered broker-dealers. 17 CFR 240.17a-7. *See also* NASD Schedules to By-Laws, Schedule C (VIII), *NASD Manual* (CCH) ¶ 1790.

[37] If the foreign broker-dealer failed to register where required, it would be subject to Commission enforcement action under section 15(a) of the Exchange Act. It also still would be subject to the Commission's broker-dealer rules, because the Exchange Act definition in section 3(a)(48) of "registered broker or dealer" includes a broker-dealer "required to register" pursuant to section 15 of the Exchange Act. 15 U.S.C. 78c(a)(48). In addition, it potentially would be exposed to customer rescission actions brought under section 29(b) of the Exchange Act, 15 U.S.C. 78cc(b). *See e.g., Regional Properties, Inc. v. Financial & Real Estate Consulting Co.*, 678 F.2d 552, 558 (5th Cir. 1982), *aff'd on other grounds*, 752 F.2d 178 (5th Cir. 1985) (later appeal); *Eastside Church of Christ v. National Plan, Inc.*, 391 F.2d 357 (5th Cir.), *cert. denied*, 393 U.S. 913 (1968) (allowing investors to rescind transactions with an unregistered broker-dealer). *See also* Gruenbaum & Steinberg, *Section 29(b) of the Securities Exchange Act of 1934: A Viable Remedy Awakened*, 48 Geo. Wash. L. Rev. 1 (1979). Finally, the foreign broker-dealer's securities activities would continue, of course, to be subject to the antifraud provisions of the federal securities acts and the rules thereunder irrespective of the firm's lack of registration.

[38] *See supra* notes 11, 12 and accompanying text. If a U.S. issuer sells its securities in the United States using its own employees, the activities of these employees may require broker-dealer registration. *See, e.g.*, letter from Jeffrey L. Steele, Office of Chief Counsel, Division of Market Regulation, SEC, to Frank L. Hays, Hays, Patterson and Ambrose (July 14, 1977) (The Colorado Life Insurance Company). This is equally true for foreign issuers using their employees to sell securities within the United States. However, the Commission has adopted Rule 3a4-1, 17 CFR 240.3a4-1, which provides a safe-harbor from broker-dealer registration for an issuer's personnel selling the issuer's securiteis under certain circumstances. *See* Securities Exchange Act Release No. 22172 (June 27, 1985), 50 FR 27940.

whose functions are not merely clerical or ministerial must be appropriately licensed by the NASD or another SRO. Moreover, the U.S. affiliate must hold all U.S. customers' accounts and perform all functions on behalf of those accounts, including executing trades, extending credit, maintaining records and issuing confirmations, and receiving, delivering, and safeguarding funds and securities. Finally, solicitation by the foreign affiliate of U.S. persons resulting in one or more securities transactions, even where those transactions are "booked" and cleared by the U.S. affiliate, would require registration of the foreign affiliate, absent exemptive or other relief.

In some circumstances, for policy reasons, the staff believes that the Commission should not regard it as necessary for a foreign broker-dealer effecting transactions on behalf of U.S. investors to register with the Commission.[39] These circumstances, many of which previously have been the subject of staff no-action letters, are discussed below.

A. Sale of Securities to Foreign Persons

In the past, the staff has issued no-action letters indicating that a foreign entity purchasing U.S. securities through U.S. broker-dealers for resale only to foreign customers outside the United States, on a pooled or individual basis, would not be required to register as a brokerdealer.[40] In the staff's view, the use of a U.S. brokerdealer to enter the U.S. securities markets provides protection to the U.S. markets.[41] Moreover, the staff believes that, in contrast to the more expansive scope of the antifraud provisions [42] the U.S. broker-dealer registration requirements were not intended to protect foreign persons [43] dealing with foreign securities professionals outside the United States.[44] Rather, the primary responsibility for protecting foreign investors from wrongful conduct of foreign securities professionals properly lies with foreign securities regulators.

The staff's position regarding the application of the broker-dealer registration provisions to foreign broker-dealers trading with foreign customers is dependent on that trading taking place outside the United States. The staff believes that foreign persons resident in this country should receive the same broker-dealer protections as any other U.S. resident, and accordingly, the staff recommends that the Commission apply section 15(a) requirements to foreign broker-dealers trading with foreign persons in the United States.

Foreign persons domiciled abroad, but who are temporarily present in this country, pose a different question. The staff is of the view that a foreign broker-dealer that solicits or engages in securities transactions with or for such persons while they are temporarily present in this country need not register with the Commission, provided that the foreign broker-dealer had a bona fide, preexisting relationship with such persons before they entered the United States.[45] The status of a foreign national as a temporary visitor or a U.S. resident, of course, would be subject to factual analysis on a case-by-case basis.[46] Nevertheless, where the foreign investors are not merely temporary visitors, the staff believes that U.S. broker-dealer registration requirements should apply to foreign entities effecting securities transactions with them.

The staff would apply a similar standard to U.S. securities firms affecting securities transactions solely with foreign investors outside the United States. Release 4708 stated that foreign broker-dealers participating in underwriting securities of U.S. issuers exclusively outside the United States need not register in the United States as broker-dealers, but did not address the application of the broker-dealer registration provisions to entities located in the U.S. whose securities activities take place outside the United States. As noted earlier, the staff previously accorded no-action treatment to U.S. entities that sold newly-issued U.S. securities exclusively to foreign investors located outside the United States, where all sales activities were conducted outside this country.[47] While

---

[39] It is important to emphasize that these conclusions turn on policy considerations and do not constitute the staff's recommendations for a Commission position on the jurisdictional limits to the extraterritorial application of U.S. broker-dealer registration requirements. As discussed previously, section 15(a) of the Exchange Act requires registration of a broker or dealer using U.S. jurisdictional means to effect transactions in securities. Given the broad definition of interstate commerce in section 3(a)(17) of the Exchange Act, *see supra* note 3, virtually any transaction-oriented contact between a foreign broker-dealer and the U.S. securities markets or a U.S. investor in the United States involves interstate commerce and could provide the jurisdictional basis for broker-dealer registration.

The extraterritorial reach of the Federal securities laws has been construed in a number of decisions concerning transnational securities fraud. *See Schoenbaum v. Firstbrook*, 405 F.2d 200, 206 (2d Cir.), *rev'd on other grounds*, 405 F.2d 215 (2d Cir. 1968) (en banc), *cert. denied sub nom. Manley v. Schoenbaum*, 395 U.S. 906 (1969) (Exchange Act could be applied extraterritorially "to protect the domestic securities market from the effects of improper foreign transactions in American securities"); *Leasco Data Processing Equipment Corp. v. Maxwell*, 468 F.2d 1326 (2d Cir. 1972) (evidence of significant conduct in the United States in relation to a foreign securities transaction would be sufficient to establish subject-matter jurisdiction) *See also Bersch v. Drexel Firestone, Inc.*, 519 F.2d 974 (2d Cir. 1975), *modifying* 389 F. Supp. 446 (S.D.N.Y. 1974), *cert. denied sub nom. Bersch v. Arthur Andersen & Co.*, 423 U.S. 1018 (1975), and *IIT v. Vencap, Ltd.*, 519 F.2d 1001 (2d Cir.), *on remand*, 411 F. Sup. 1094 (S.D.N.Y. 1975).

Section 30(b) of the Exchange Act, 15 U.S.C. 78dd(b), excludes from the application of the Exchange Act or the rules thereunder "any person insofar as he transacts a business in securities without the jurisdiction of the United States," in the absence of Commission rules explicitly applying these provisions to such persons. While no rules have been adopted, the exemption provided by section 30(b) has been held unavailable where transactions occur in a U.S. securities market. *Roth v. Fund of Funds, Ltd.*, 405 F.2d 421 (2d Cir. 1968), *cert. denied*, 394 U.S. 975, *reh. denied*, 395 U.S. 941 (1969); *Schoenbaum*, 405 F.2d at 208; *Selzer v. The Bank of Bermuda, Ltd.*, 385 F. Supp. 415 (S.D.N.Y 1974); *In the Matter of I.O.S., Ltd. (S.A.)*, [1971-72 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 78,638 (Mar. 14, 1972); where offers and sales are made abroad to U.S. persons or in the United States to facilitate sales of securities abroad, *S.E.C. v. United Financial Group, Inc.*, 474 F.2d 354 (9th Cir. 1973); *Troves v. Anthes Imperial Ltd.*, 473 F.2d 515 (8th Cir. 1973); *Leasco*, 468 F.2d at 1336 n.6; *Bersch*, 389 F. Supp. at 453–459; or where the United States is used as a base for securities fraud perpetrated on foreigners. *Arthur Lipper Corp. v. S.E.C.*, 547 F.2d 171 (2d Cir. 1976), *reh. denied*, 551 F.2d 915 (2d Cir. 1977), *cert. denied*, 434 U.S. 1009 (1978).

[40] *See supra* note 10.

[41] The foreign broker-dealers can execute trades for foreign investors through U.S. broker-dealers on either an omnibus or a fully-disclosed basis. Although the staff has taken no-action positions only in the context of a fully-disclosed clearing arrangement between the foreign and U.S. broker-dealer (*e.g.*, Bear, Stearns/Sun Hung Kai letter, *Supra* note 10), the staff believes that either clearing arrangement provides adequate protection of the U.S. markets and of the Commission's ability to investigate possible violations of the U.S. securities laws from abroad.

[42] *E.g.*, Exchange Act section 10(b), 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5.

[43] If a foreign broker-dealer affiliate or subsidiary of a U.S. institution is organized or incorporated and operating outside the United States and engages only in transactions with foreign entities in foreign securities markets, the staff would not regard these foreign subsidiaries or affiliates as U.S. persons for purposes of broker-dealer registration.

[44] The staff continues to believe that the antifraud provisions of the federal securities laws should be interpreted broadly to restrain fraud involving U.S. jurisdiction means.

[45] This view is consistent with the proposal of the American Law Institute that a non-resident broker-dealer that "does business with * * * a non-national of the United States who is present as a nonresident within the United States and was previously a customer or client" should not be subject to U.S. broker-dealer jurisdiction. *All Federal Securities Code* section 1905(b)(2)(B)(1980). Professor Loss, the reporter for the Code, uses the example of a "Canadian broker who uses the telephone to service a customer who is vacationing in Florida." *Id.* at comment 9.

[46] Apart from concerns about broker-dealer registration, foreign broker-dealers should be careful that any offers or sales of securities made within the United States comply with the registration provisions of the Securities Act. *See* Securities Act Release No. 6779 (June 10, 1988).

[47] *E.g.*, Williams Island Associates letter, *supra* note 9.

the staff believes that U.S. securities firms selling such securities to foreign customers who are exclusively outside the United States should not be subject to U.S. registration requirements, where the sales, or related activities, emanate from within the United States, the staff recommends that the Commission require the firms to comply with U.S. broker-dealer registration requirements.[48] Although the protection of foreign investors is not a primary purpose of the U.S. securities laws, the staff believes that the Commission has a strong interest in regulating the conduct of securities professionals within the territorial boundaries of the United States. The staff is of the view that requiring broker-dealer registration of all persons effecting securities transactions from within the United States is consistent with the Commission's mandate under the federal securities laws and also comports with the legitimate expectations of foreign investors that persons selling securities from within this country are fully subject to the regulatory protections applicable to registered broker-dealers.[49]

B. Solicitation of U.S. Investors

The staff believes that broker-dealer registration should not be necessary if a foreign broker-dealer operating from outside the United States effects transactions for U.S. customers *only* on the customers' order, without solicitation in any form on the part of the broker-dealer. As discussed earlier, the staff generally has held that if a transaction with a U.S. customer is solicited, the broker-dealer effecting the transaction must be registered.[50] Although broker-dealer registration is an important safeguard for U.S. investors and securities markets, the staff would not apply these registration requirements where U.S. investors have sought out foreign broker-dealers outside the United States and initiated transactions in foreign securities markets entirely of their own accord. In this instance, U.S. investors would have taken the initiative to trade outside the United States foreign broker-dealers that are not conducting activities within the United States. Consequently, the U.S. investors have little reason to expect these foreign broker-dealers to be subject to U.S. broker-dealer requirements. Moreover, requiring the foreign broker-dealer to register as a broker-dealer in the United States because of unsolicited trades with U.S. persons would likely cause it to refuse to deal with U.S. persons under any circumstances. However, where a foreign broker-dealer actively solicits investors in the United States, even U.S. investors for which it previously had executed unsolicited trades, the staff believes that the foreign broker-dealer should be subject fully to U.S. broker-dealer registration requirements.[51]

The staff believes that the same position should not apply with respect to foreign broker-dealers that solicit U.S. persons resident abroad. Most U.S. persons residing abroad typically would not expect, in choosing to deal with foreign broker-dealers, that these foreign broker-dealers would be subject to U.S. registration requirements. Nor would foreign broker-dealers soliciting U.S. persons resident abroad expect that they would be covered by U.S. broker-dealer requirements. Therefore, the staff generally would not require foreign broker-dealers to register with the Commission merely because their customers include U.S. persons resident abroad. However, the Commission historically has taken the view that foreign broker-dealers that specifically target identifiable groups of U.S. persons resident abroad, *e.g.*, U.S. military and embassy personnel, could be subject to broker-dealer registration.[52] The staff is not proposing that the Commission alter this position.

As a general matter, the staff views "solicitation," in the context of broker-dealer regulation,[53] as including any affirmative effort by a broker or dealer intended to induce transactional business for the broker-dealer or its affiliates.[54] Solicitation includes efforts to induce a single transaction or to develop an ongoing securities business relationship. Conduct deemed by the staff to be solicitation includes telephone calls from a broker-dealer to a customer encouraging use of the broker-dealer to effect transactions, as well as advertising one's function as a broker or a market maker in newspapers or periodicals of general circulation in the United States, or on any radio or television station broadcasting into the United States. Similarly, the staff believes that conducting investment seminars for U.S. investors, whether or not the seminars are hosted by a registered U.S. broker-dealer, would constitute solicitation.[55] A broker-dealer also would solicit customers by, among other things, recommending the purchase or sale of particular securities, with the expectation that the customer will execute the recommended trade through the broker-dealer.

The staff believes that the provision of research to investors also may constitute solicitation by a broker or dealer. Broker-dealers often provide research to customers on a non-fee basis, with the expectation that the customer eventually will trade through the broker-dealer. They may provide research to acquaint potential customers with their existence, to maintain customer goodwill, or to impress upon customers their knowledge of specific companies or markets so that these cutomers will be encouraged to use their execution service for that company or those markets. In each instance, the basic purpose of providing the non-fee research is to generate transactional business for the broker-dealer.

The staff believes that the deliberate transmission of information, opinions, or recommendations to particular investors in the United States, whether directed at individuals or groups, could result in the conclusion that the foreign broker-dealer

[48] In several instances, the staff has accorded no-action treatment where such sales activities were conducted in part from within this country. Barons Mortgage Association letter, *supra* note 9; letter from Lynne G. Masters, Attorney, Office of Chief Counsel, Division of Market Regulation, SEC, to Chester J. Jachimiec, Esq., Winstead, McGuire, Sechrest & Minick (Aug. 3, 1987) (States Petroleum, Inc.). To the extent that these letters are inconsistent with the position recommended by the staff in this release, they would be so modified upon the Commission's adoption of this position.

[49] This position is consistent with that adopted by the staff of the Division of Investment Management concerning investment advisers. *see* letter from Joseph R. Fleming, Attorney, Division of Investment Management, to Cim-Seong Seow (Oct. 30, 1987).

[50] *see supra* pp. 7–9; *see also* Report on Internationalization at V–42.

[51] In this regard, the Commission's position is consistent with that taken by foreign securities regulators. *see* Financial Services act 1986, section 1(3)(b); Schedule 1, Part IV, section 26, 27 (United Kingdom).

[52] *See* Release 4708 (a public offering of securities specifically directed toward U.S. citizens abroad, such as military personnel, would be regarded as subject to securities, Act registration); *S.E.C. v. Siamerican Securities, Ltd.*, Litigation Release No. 6937 (June 17, 1975) (charging section 15(a) violation, among other things, regarding solicitation of securities transactions from American citizens stationed in Southeast Asia, for execution primarily on U.S. exchanges and over-the-counter markets).

[53] Section 15(a) of the Exchange Act requires registration of brokers and dealers that "induce *or attempt to induce* the purchase or sale of, any security." 15 U.S.C. 78o(a) (emphasis added). If a foreign broker-dealer effected trades using the U.S. jurisdictional means so as to fall within section 3(a)(4) or (5)'s definitions of broker or dealer, solicitation of trades from U.S. customers would be sufficient to trigger section 15(a)'s registration requirements.

[54] The Report on Internationalization said: key to the issue of solicitation is whether the foreign broker-dealer's contacts with U.S. markets reasonably may be viewed as attempting to induce an investor's purchase or sale of a security.

Report on Internationalization at V–42; *see also* Hoare & Govett letter, *supra* note 12.

[55] *See* Hoare & Govett letter, *supra* note 12.

has solicited those investors.[56] The staff, however, would not consider the foreign broker-dealer to have solicited trades by U.S. investors through providing research unless the foreign broker-dealer directed the research to U.S. investors and knew or reasonably could have determined that its research would generate trades by those investors. In this regard, it is the foreign broker-dealer's obligation to develop adequate procedures to avoid transmission of research reports into U.S. markets that may be expected to induce transactions in securities by U.S. persons. Alternatively, if foreign broker-dealers choose to provide research to U.S. investors that is expected to induce transactions, these foreign broker-dealers should review their compliance procedures to ensure that these procedures will prevent trades from being effected in securities identified in the research, in order to avoid violating the U.S. broker-dealer registration requirements.

In many cases, research is provided to customers with the express or implied understanding that the customer will pay for it in commission dollars by directing trades to the broker-dealer.[57] These "soft dollar" research arrangements are used widely by broker-dealers both in the United States and abroad. Where foreign broker-dealers provide research to U.S. investors pursuant to express or implied understandings that the investor will direct a given amount of commission income to the foreign broker-dealer, the staff would consider the foreign broker-dealer to have induced purchases and sales of securities, irrespective of whether the trades received from the investor related to particular research that has been provided.

The staff does not wish to restrict U.S. investors' ability to obtain research of foreign origin where adequate regulatory safeguards are present. Therefore, consistent with the staff no-action positions discussed earlier, the staff would not consider research reports prepared by a foreign broker-dealer to constitute solicitation by the foreign broker-dealer of an order from a U.S. investor, where the research reports are distributed to U.S. investors by an affiliated U.S. broker-dealer, that affiliated broker-dealer prominently states in writing on the research report that it has accepted responsibility for the content of the research,[58] the research report prominently indicates that any U.S. persons receiving the research and wishing to effect transactions in any security discussed should do so with the U.S. affiliate, not the foreign broker-dealer, and transactions with U.S. investors in any securities identified in the research actually are effected only with or through the U.S. affiliate, not the foreign broker-dealer.

It is important to note that the responsibility to register as a broker-dealer, once incurred, is a continuing obligation. If a foreign broker-dealer solicits investors in the United States and executes securities transactions for those investors, the staff believes that the foreign broker-dealer has an obligation to register with the Commission as a broker-dealer. This obligation continues until the foreign broker-dealer completely ceases to do business with or for those investors. Even if a foreign broker-dealer, after incurring this obligation, limited its trading with investors in the United States to execution of unsolicited trades, its activity would require the foreign broker-dealer to comply with the U.S. broker-dealer registration requirements.

C. Exchange of Quotations

The dissemination in the United States of a broker-dealer's quotes for a security typically would be a form of solicitation. Nonetheless, the staff has given assurances that no enforcement action would be recommended for lack of broker-dealer registration with respect to the collective distribution by organized foreign exchanges of foreign market maker quotes, primarily to registered U.S. broker-dealers.[59] While the staff supports this position, it is important to note that the individual dissemination of a market maker's quotations to U.S. investors, such as through a private quote system, is not covered by the NASD/ISE, TOPIC, or NASD/SSE no-action positions. Finally, as the no-action letters indicate, other contacts with U.S. investors on the part of market makers whose quotations are disseminated by the foreign markets, viewed together with the market's dissemination of these quotations, might result in the conclusion that the market makers have solicited U.S. investors and would be required to register as broker-dealers if trades are effected for those investors.[60]

D. Use of U.S. Broker-Dealer Affiliates

Many foreign broker-dealers have established registered broker-dealer affiliates in the United States that are fully qualified to deal with U.S. investors and trade in U.S. securities.[61] Nonetheless, these foreign broker-dealers may prefer to deal with major U.S. institutional investors from their overseas trading desks, where their dealer operations are based. In addition, because overseas trading desks often are principal sources of current information on foreign market conditions and foreign securities, many U.S. institutional investors want direct contact with these traders. However, foreign broker-dealers are not themselves willing to register as U.S. broker-dealers, because registration would require the entire firm to comply with U.S. broker-dealer requirements.

The no-action request granted to Chase Capital Markets US, discussed earlier, provided a means for foreign trading operations to communicate with U.S. institutional investors without the foreign broker-dealers registering in the United States. Under the terms of that letter, the foreign broker-dealer may communicate with U.S. institutional investors through the U.S. affiliate, with a U.S.-qualified representative participating in telephone conversations, effecting transactions, and taking full responsibility for the trades. Like the Vickers da Costa/Citicorp exemption letter,[62] the letter to Chase Capital Markets US provided that the foreign broker-dealer would assist the Commission in the conduct of

[56] If a branch or affiliate of a foreign entity in the United States disseminates research information, registration as an investment adviser may also be required. *See* section 203 of the Investment Advisers Act of 1940, 15 U.S.C. 80b–3.

[57] *See* Wood McKenzie letters, *supra* note 16.

[58] Article III, section 35(d)(2) of the NASD Rules of Fair Practice requires that all "[a]dvertisements and sales literature shall contain the name of the [NASD] member, [and of] the person or firm preparing the material, if other than the member" and that "[s]tatistical tables, charts, graphs or other illustrations used by members * * * should disclose the source of the information if not prepared by the member." *NASD Manual* (CCH) ¶ 2195 at 2177–78. Under section 35(a)(1), "advertisement" means any "material published, or designed for use in" various public print and electronic media. *Id.* at 2174. Under section 35(a)(2), "sales literature" specifically includes "research reports, market letters, performance reports or summaries, [and] seminar texts * * *." *Id.* Rule 472.40(7) of the New York Stock Exchange requires that communications with the public that are "not prepared under the direct supervision of the [NYSE] member organization or its correspondent [NYSE] member organization should show the person (by name and appropriate title) or outside organization which prepared the material." *NYSE Guide* (CCH) ¶ 2472.40(7) at 4027. Under Rule 472.10(a), a "[c]ommunication" includes "market letters [and] research reports * * *." *Id.* at ¶ 2472.10(1). The staff proposes that the Commission not view compliance with these requirements, in itself, as solicitation by the foreign affiliate.

[59] *See* NASD/ISE, TOPIC, and NASD/SSE letters *supra* notes 24, 25, 26, and 27.

[60] *See supra* p. 13.

[61] *See, e.g.*, Chase Capital Markets US letter, *supra* note 19.

[62] *Supra* note 29.

investigations by furnishing information concerning its contacts with U.S. investors and trading records relating to the execution of U.S. investors' orders by the firm. Both letters also indicated that the foreign broker-dealers would endeavor, directly or indirectly, to obtain the consent of foreign customers to the release of any information sought by the Commission.

The staff supports the concept of allowing foreign broker-dealers to solicit transactions with U.S. institutional investors through U.S. registered broker-dealer affiliates. Accordingly, the staff will continue to consider granting appropriate relief permitting foreign broker-dealers to be in contact with U.S. institutional investors without registration, provided that a U.S. broker-dealer affiliate is fully responsible both for these contacts and for executing any solicited trades from the U.S. investors,[63] including confirming, clearing, and settling the trade, safekeeping customers' funds and securities, maintaining records of the trade, making appropriate net capital computations regarding the trade, and arranging for extending any credit used to purchase securities.[64] In addition, the foreign broker-dealer must agree to provide records and information concerning its contacts with U.S. institutional investors and its execution of their orders, when requested by the Commission. Further, the foreign broker-dealer must provide the Commission with assistance in obtaining information and evidence from other persons related to the transactions, including obtaining the consent of its foreign customers to the release of information sought by the Commission, and must consent itself to service of process upon the U.S. affiliate as its agent.[65] Finally, the staff recommends that the Commission not object if the registered representatives of the U.S. broker-dealer affiliate participating in contacts between the foreign broker-dealer and U.S. investors also are employees of the foreign broker-dealer. Assuming that the U.S. broker-dealer maintained the required supervision and control of these employees and the arrangement satisfied the above conditions, the employees could be located in the foreign broker-dealer's overseas offices.

E. Request for Comments on Staff Interpretations

Sections II and III of this release review staff interpretive and no-action positions regarding foreign broker-dealer registration, and articulate current staff views incorporating these past positions. These positions have been developed over more than three decades, primarily in no-action letters provided by the staff to the securities bar. The Commission preliminarily concurs in these staff positions and believes that publication of a comprehensive discussion of current positions provides valuable assistance to foreign broker-dealers and their counsel in determining their registration obligations. The Commission believes that it is appropriate to provide the public an opportunity to comment on these positions before the Commission adopts some or all of them as its own. Comments are invited on all aspects of the staff positions expressed in this release, including whether they provide adequate protection to U.S. markets and investors, and whether reliance upon them would be practicable under current market conditions.

The development of comprehensive regulatory schemes for broker-dealers in other countries suggests the possibility that in the future some form of reciprocal recognition for broker-dealers could be agreed upon with foreign securities regulators. Under a reciprocal recognition approach, each participating country would recognize regulation of securities professionals in a foreign jurisdiction as a substitute in some degree for its own domestic broker-dealer regulation.[66] Recognition of foreign broker-dealer regulatory schemes on a reciprocal basis potentially could facilitate cross-border operations for international broker-dealers. But reciprocal recognition could raise the possibility of reduced U.S. investor protection, unless the foreign jurisdiction had a broker-dealer regulatory system that was comparable and compatible with that of the United States, this system was consistently and comprehensively enforced, and ready cooperation in surveillance and enforcement matters between the United States and the foreign jurisdiction was the norm. In view of these considerations, the Commission is weighing whether some form of reciprocal recognition for international broker-dealers could be developed at some future point.

IV. Proposed Rule 15a–6

Although the Chase Capital Markets US letter establishes a reasonable means by which foreign broker-dealers may maintain relationships with U.S. institutional investors without registering in the United States, the Commission is concerned that certain of the conditions incorporated into that letter may prove to be cumbersome in some circumstances for foreign broker-dealers seeking to provide research and analysis to major institutional investors. Accordingly, the Commission is proposing a rule under section 15(a)(2) of the Exchange Act [67] that would

---

[63] Of course, as discussed earlier, *see supra* note 17 and accompanying text, if a transaction is demonstrably unsolicited, execution of the trade through the U.S. affiliate would be unnecessary. *But see* discussion *supra* p. 31 regarding soft-dollar arrangements.

[64] The U.S. registered broker-dealer would be free to execute the trade with the foreign firm's overseas trading operation.

[65] The staff is aware that, through blocking and secrecy statutes, certain countries limit the ability of local entities to release information. The Commission and several foreign governments and regulators have entered into agreements in an attempt to overcome the limits imposed by these statutes. Treaties for Mutual Assistance in Criminal Matters have been concluded with Switzerland, Turkey, Canada, Italy, and the Netherlands. A Memorandum of Understanding with respect to problems of insider trading has been entered into with Switzerland. In addition, a Memorandum of Understanding on Matters Relating to Securities has been entered into with the United Kingdom Department of Trade and Industry. Also, the Commission and the Japanese Ministry of Finance's Securities Bureau have signed a memorandum concerning the exchange of information in the area of securities regulation. Recently, the Commission signed a Memorandum of Understanding ("Canadian MOU") with the Ontario Securities Commission, the Commission des Valeurs Mobilieres du Quebec, and the British Columbia Securities Commission concerning mutual cooperation in matters relating to the administration and enforcement of U.S. and Canadian securities laws. The mutual assistance contemplated by the Canadian MOU includes providing access to information in the files of each securities authority and obtaining compulsory depositions and production of documents. The Canadian MOU recognizes that a signatory may not have the authority to provide such assistance, but the signatories undertake to seek to obtain that authorization if necessary.

The staff expects that these agreements will allow access to trading and other records that the Commission requires in order to carry out its mandate of investor protection. Ultimately, the staff hopes that reciprocal statutory provisions providing for information-sharing will exist between all countries in which securities markets operate. Such information-sharing provisions would ensure, among other things, access to trading records and other information requested by representatives of any country maintaining a reciprocity statute. The Commission is willing and able to enter into additional and more comprehensive MOUs, but at present, foreign broker-dealers in all countries, including those with no such agreements, bear the responsibility for providing foreign customer information to the Commission at its request.

[66] The Commodity Futures Trading Commission ("CFTC") recently adopted a unilateral recognition approach for regulation of certain foreign futures commission merchants. The CFTC provided an exemption from its rules governing the sale of options and futures traded on a foreign board of trade by futures commission merchants located outside the United States, if these futures commission merchants demonstrated that they were subject to a regulatory scheme comparable to that of the CFTC. 52 FR 28980.

[67] 15 U.S.C. 78o(a)(2).

provide an exemption from broker-dealer registration for foreign broker-dealers that effect trades for major U.S. institutional investors through a U.S. registered broker-dealer affiliate, or that limit their activities entirely to certain non-U.S. persons. Although based upon the approach set forth in the Chase Capital Markets US letter, the rule is broader in certain respects.

A. Foreign Broker-Dealer Transactions with U.S. Institutional Investors

Unlike the Chase Capital Markets US letter, proposed Rule 15a–6 would allow foreign broker-dealers to contact certain classes of U.S. institutional investors, as defined in the rule, without the participation of an employee of a U.S. broker-dealer affiliate. However, the rule would require the foreign broker-dealer's personnel involved in the transactions to meet certain requirements, and the U.S. broker-dealer affiliate to be responsible for supervising the contact and any resulting trades. If a trade is agreed upon, the rule would require the U.S. broker-dealer affiliate to execute the trade on behalf of the investor, taking full responsibility for all aspects of the trade. In addition, the rule would expand the activities of foreign broker-dealers by allowing them to initiate contact with specified U.S. persons, if all such contacts are conducted in compliance with the provisions of the rule.

In general, proposed Rule 15a–6(a) would exempt from the broker-dealer registration requirement of section 15(a) foreign brokers or dealers that induce or attempt to induce the purchase or sale of any security by U.S. institutional investors under conditions enumerated in the rule. Among the conditions is a requirement in paragraph (a)(1)(iv) of the rule that the foreign broker-dealer must conduct its activities through a registered U.S. broker-dealer affiliate.[68] Further, under paragraphs (a)(1) (ii) and (iii) of the rule, the availability of the safe harbor is conditioned on foreign associated persons of the foreign broker-dealer not being subject to a statutory disqualification specified in section 3(a)(39) of the Exchange Act [69], or violations of substantially equivalent foreign statutes or regulations, and conducting their securities activities exclusively from without the United States.

The U.S. broker-dealer affiliate would not be required to be a party to all communications with the specified U.S. institutional investors. However, paragraph (a)(1)(iv)(A)(*1*) of the rule would require the U.S. affiliate to obtain and keep a record of the information required by Rule 17a–3(a)(12) [70] with respect to each individual associated with the foreign broker-dealer who will be in contact with U.S. institutional investors. This requirement is intended to ensure that the U.S. broker-dealer will receive notice of the identity of, and has reviewed the background of, foreign personnel who will contact U.S. institutional investors. It also would provide the Commission with ready access to information concerning these persons. The Commission solicits comment whether this method would be suitable for obtaining information concerning foreign persons, or whether use of Form U–4 or a Commission-designed form would be more appropriate. The Commission also requests comment on whether further information should be required and whether the U.S. affiliate would experience any difficulties in obtaining the required information from foreign broker-dealers or their personnel.

In addition, under paragraph (a)(1)(iv)(A)(*2*) of the rule, the U.S. broker-dealer would have to obtain written consents, from the foreign broker-dealer and each foreign individual in contact with U.S. institutional investors, to service of process for any civil action or proceeding conducted by the Commission or an SRO. Written records of these assurances and consents would have to be maintained in the United States by the U.S. broker-dealer affiliate.

Furthermore, paragraph (a)(1)(iv)(B) of the rule would require the registered U.S. broker-dealer affiliate effecting the trades to be responsible for all aspects of the U.S. institutional investor's account, including: Extensions of or arrangements for extensions of credit in connection with securities transactions; maintenance of applicable books and records, including those required by Rules 17a–3 and 17a–4; [71] receipt, delivery, and safeguarding of funds and securities in compliance with Rule 15c3–3; [72] and confirmations and statements. Under paragraph (a)(1)(iv)(A)(*3*) of the rule, the registered broker-dealer also would have to maintain all records in connection with trading activities of the U.S. institutional investors, as well as the records required under paragraphs (a)(1)(iv)(A) (*1*) and (*2*) of the rule, and make the records available to the Commission upon request. In addition, paragraph (a)(1)(v) of the rule would require that the foreign broker-dealer provide the Commission with any information, documents, or records in its possession, custody, or control, the testimony of any of its foreign associated persons, and assistance in taking the evidence of other persons that relate, directly or indirectly, to transactions with a U.S. institutional investor or with the U.S. broker-dealer that executes them.

Foreign broker-dealers that did not comply with these requirements would

[68] The Commission requests comment whether the nature of such affiliation should involve a specified degree of ownership or control.

[69] Section 3(a)(39) of the Exchange Act, 15 U.S.C. 78c(a)(39), speaks of statutory disqualifications with respect to membership or participation in, or association with a member of, an SRO. Proposed Rule 15a–6 thus uses the definition for purposes beyond SRO membership, *i.e.*, by serving to prevent contact between certain foreign associated persons and U.S. institutional investors.

[70] 17 CFR 240.17a–3 requires every member of a national securities exchange that transacts securities business directly with non-members, every worker or dealer that transacts securities business through any such member, and every broker or dealer registered under section 15 of the Exchange Act to make and keep current certain books and records. Paragraph (a)(12)(i) requires every broker or dealer that transacts securities dealer to execute a questionnaire or application for employment containing at least the following information: (a) Name, address, social security number, and starting date of association; (b) date of birth; (c) a complete, consecutive statement of all business connections for at least the preceeding ten years, whether part-time or full time; (d) a record of any denial of membership or registration, and of any disciplinary action taken or sanction imposed by any state or Federal agency, or by any national securities exchange or national securities association, including any finding that the associated person was a cause of any disciplinary action or had violated any law; (e) a record of any denial, suspension, expulsion, or revocation of membership or registration of any member or broker-dealer with which the associated person was connected in any way when such action was taken; (f) a record of any permanent or temporary injunction was entered against the associated person or any member or broker-dealer with which the associated person was connected in any way when such an injunction was entered; (g) a record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance, or real estate (including, without limitation, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property, bribery, forgery, counterfeiting, or extortion, and the disposition of any of these; and (h) a record of any other name or names by which the associated person has been known or which the associated person has used. Paragraph (a)(ii) defines "associated person" as any partner, officer, director, salesman, trader, manager, or any employee handling funds or securities or soliciting transactions or accounts for such member or broker-dealer. Only one modification would be required in the information described in paragraph (a)(12)(i)(d). Specifically, the foreign broker-dealer must include sanctions imposed by both domestic and foreign securities authorities, exchanges, or associations. The other categories of information required already are broad enough to include foreign activity.

[71] 17 CFR 240.17a–3 and 240.17a–4.

[72] 17 CFR 240.15c3.3.

not be able to rely upon the proposed safe harbor from broker-dealer registration. Accordingly, the Commission requests comment whether foreign broker-dealers would experience any difficulties in meeting these requirements, including assisting the Commission in taking evidence of foreign persons, and whether registered U.S. broker-dealers would experience any difficulty in maintaining the records required by the rule.

Moreover, because of its supervisory responsibility for the U.S. institutional investor's account and because of its affiliate relationship with the foreign broker-dealer, the U.S. affiliate will be responsible for taking reasonable steps to assure itself that any such transactions are not effected in a manner inconsistent with U.S. securities laws. In this regard, the U.S. affiliate also would be responsible for taking reasonable steps to assure itself, for example, that there is a reasonable basis for any recommendation made by the foreign affiliate or its personnel.

The exemption provided in paragraph (a)(1) would be available to foreign broker-dealers that satisfy the foregoing structural requirements, and limit their activities involving U.S. persons to certain large institutional investors. For purposes of the rule, a U.S. institutional investor is defined under paragraph (b)(2)(ii) to include: (1) An entity established under U.S. or state law; (2) an entity established under foreign law, if the entity's business is conducted principally in the United States; and (3) a branch of a foreign entity located in the United States. Within the broad category of such institutions, paragraph (b)(2)(i) further limits the term "U.S. institutional investor" to U.S. persons that are described in Rule 501(a) (1), (2), or (3) of Regulation D under the Securities Act,[73] and that, with the exception of registered broker-dealers, have total assets in excess of $100 million. These investors include banks (but not U.S. branches of foreign banks), savings and loan associations, brokers or dealers registered under section 15(b) of the Exchange Act, insurance companies, registered investment companies, small business investment companies, employee benefit plans, private business development companies, and certain section 501(c)(3) organizations under the Internal Revenue Code. While not treated as accredited investors under Regulation D,[74] registered investment advisers are included as U.S. institutional investors within the rule if they have $100 million in assets under management. Further, if a registered investment company itself does not have total assets in excess of $100 million, it still may qualify as a U.S. institutional investor if it is part of a family of investment companies that has total assets in excess of $100 million. Paragraph (b)(4) of the rule defines "family of investment companies," with special treatment of insurance company separate accounts.

The proposed asset limitation in the rule is based on the assumption that direct U.S. oversight of the competence and conduct of foreign sales personnel may be of less significance where they are soliciting only U.S. institutional investor with high levels of assets. The $100 million asset level, derived from the reporting standard of section 13(f) of the Exchange Act,[75] is designed to increase the likelihood that the institution or its investment advisers have prior experience in foreign markets that provides insight into the reliability and reputation of various foreign broker-dealers. The Commission seeks comment on whether the proposed asset test used in the definition of U.S. institutional investor is adequate and appropriate to achieve the Commission's purposes. The Commission also requests comment on whether other factors, including distinguishing among types of institutions for purposes of establishing minimum asset levels, should be considered.

"Foreign broker or dealer" is defined in paragraph (b)(1) as any foreign entity (including a foreign bank) whose activities, if conducted in the United States, would bring it within the definition of "broker" [76] or "dealer" [77] under the Exchange Act. However, an overseas office or branch of a U.S. registered broker or dealer would not be a foreign broker or dealer. Finally, paragraph (b)(3) defines "foreign associated person" as any natural person who is an associated person, within the meaning of section 3(a)(18) of the Exchange Act,[78] of a foreign broker or dealer and who participates in solicitation of a U.S. institutional investor. The Commission requests comment on these definitions.

B. Foreign Broker-Dealer Transactions Limited Solely to Non-U.S. Persons

As discussed earlier, foreign broker-dealers that do not contact U.S. persons need not register with the Commission. Under paragraph (a)(2) of the rule, foreign broker-dealers that limit their activities to certain persons would be exempt from broker-dealer registration without being required to comply with the requirements of paragraph (a)(1). These persons include: (1) A bona fide agency or branch of a U.S. person located outside the United States; (2) any affiliate or subsidiary of a U.S. person located outside the United States, that is established under foreign law; and (3) certain international organizations, regardless of location.[79]

V. Conclusion

In publishing this release, the Commission seeks to clarify ambiguities that have arisen regarding when a foreign entity is required to register as a broker-dealer. This release sets forth for comment staff views on registration, which the Commission preliminarily supports, in preparation for publication of a Commission position on this subject. The release also proposes for comment an exemptive rule for foreign entities that deal with certain non-U.S. persons, or with specified U.S. institutional investors under certain limited conditions.[80]

The Commission anticipates that proposed Rule 15a–6, if adopted, will allow major U.S. institutional investors more efficient access to foreign broker-dealers, and through them to foreign markets, without jeopardizing the fundamental protection that the U.S. securities laws provide. The proposed rule is designed to maintain safeguards for U.S. institutional customers through the intermediation of the U.S. registered broker-dealer and the recordkeeping requirements. The responsibility of the U.S. broker-dealer for executing all trades would ensure that a record of the trading was available in the United States, which would facilitate Commission review of this trading and also subject this trading to the U.S. broker-dealer's supervisory responsibility.

Proposed Rule 15a–6 would supplement the positions expressed previously in this release, providing an alternative structure for dealing with the specified U.S. investors without being subject to the broker-dealer registration

[73] 17 CFR 230.501(a) (1), (2), or (3).

[74] 17 CFR 230.501(a).

[75] 15 U.S.C. 78m(f).

[76] *Supra* note 1.

[77] *Supra* note 2.

[78] 15 U.S.C. 78c(a)(18).

[79] It is important to note that this exemption is intended to apply to transactions with the institutions, and not with personnel of the institutions in their individual capacity.

[80] However, the Commission's views on registration of foreign broker-dealers and proposed Rule 15a–6 do not necessarily reflect the requirements of any state securities statutes, which may apply to the activities of foreign broker-dealers within the jurisdiction of such states.

provisions of section 15(a). In addition to the comments requested earlier, the Commission requests comment whether this structure provides a viable means for foreign broker-dealers to approach U.S. institutional investors without sacrificing basic broker-dealer protections; whether the safeguards provided by the U.S. broker-dealers' involvement are sufficient to allow foreign broker-dealers to solicit investors in the United States; whether the conditions included in the rule provide sufficient protection to U.S. institutional investors dealing directly with foreign broker-dealers; and whether foreign broker-dealers feasibly could institute recordkeeping and monitoring procedures to prevent effecting transactions with investors in the United States in securities promoted in research directed by the foreign broker-dealer or its U.S. affiliates to such investors.

VI. Regulatory Flexibility Act Analysis

Section 3(a) [81] of the Regulatory Flexibility Act ("RFA") requires the Commission to undertake an initial regulatory flexibility analysis of the impact of a proposed rule on small entities, unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[82] The application of the RFA to proposed Rule 15a–6 is limited, because its exemptive provisions would be restricted to foreign broker-dealers, which need not be considered under RFA.[83] In addition, to the extent that the proposed rule, if adopted, would impose any costs on registered broker-dealer affiliates of such foreign broker-dealers or to have a competitive effect on other domestic broker-dealers, those costs are not significant and would not impact a substantial number of small domestic broker-dealers. Accordingly, the Chairman has certified that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

VII. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and particularly sections 3, 10, 15, 17, 23, and 30 thereof, 15 U.S.C. 78c, 78j, 78o, 78q, 78w, and 78dd, the Commission proposes to adopt § 240.15a–6 of Title 17 of the Code of Federal Regulations in the manner set forth below.

[81] 5 U.S.C. 603(a).
[82] 5 U.S.C. 605(b).
[83] 5 U.S.C. 605.

VIII. Text of Proposed Rule

In accordance with the foregoing, it is proposed to amend 17 CFR Part 240 as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citations:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * * Section 240.15a–6, also issued under secs. 3, 10, 15, 17, and 30, 15 U.S.C. 78c, 78j, 78o, 78q, and 78dd;

2. By adding § 240.15a–6 after the undesignated heading as follows:

Registration of Brokers and Dealers

§ 240.15a–6 Exemption of certain foreign brokers or dealers.

(a) A foreign broker or dealer subject to the registration requirement of paragraph (1) of section 15(a) of the Act, because it induces or attempts to induce the purchase or sale of any security by a U.S. person, shall be exempt from paragraph (1) of section 15(a), if:

(1)(i) Such activities of the foreign broker or dealer involving U.S. persons are limited to U.S. institutional investors;

(ii) Each foreign associated person is not subject to a statutory disqualification specified in section 3(a)(39) of the Act, or a violation of any substantially equivalent foreign statute or regulation;

(iii) Each foreign associated person conducts all securities activities from outside the United States; and

(iv) The foreign broker or dealer effects such transactions with the U.S. institutional investor through a broker or dealer registered with the Commission pursuant to section 15(b) of the Act, and

(A) The registered broker or dealer:

(*1*) Obtains from the foreign broker or dealer, with respect to each foreign associated person, the information specified in Rule 17a–3(a)(12) under the Act (17 CFR 240.17a–3(a)(12)): *Provided,* That the information required by paragraph (a)(12)(d) of such Rule shall include sanctions imposed by foreign securities authorities, exchanges, or associations;

(*2*) Obtains from the foreign broker or dealer and each foreign associated person written consent to service of process for any civil action brought by or proceeding before the Commission or a self-regulatory organization (as defined in section 3(a)(26) of the Act), stating that process may be served on the registered broker or dealer as provided on the registered broker or dealer's current Form BD; and

(*3*) Maintains a written record of the information and consents required by paragraphs (a)(1)(i)(A) (*1*) and (*2*) of this section, and all records in connection with trading activities of a U.S. institutional investor involving the foreign broker or dealer conducted pursuant to paragraph (a)(1) of this section, in an office of the registered broker or dealer located in the United States, and makes such records available to the Commission upon request; and

(B) The registered broker or dealer is responsible for:

(*1*) Executing the transactions with or for the U.S. institutional investor,

(*2*) Extending or arranging for the extension of credit to the U.S. institutional investor in connection with the purchase of securities,

(*3*) Maintaining all applicable books and records, including those required by Rules 17a–3 and 17a–4 under the Act (17 CFR 240.17a–3 and 240.17a–4),

(*4*) Receiving, delivering, and safeguarding funds and securities or behalf of the U.S. institutional investor in compliance with Rule 15c3–3 under the Act (17 CFR 240.15c3–3), and

(*5*) Issuing all required confirmations and statements to the U.S. institutional investor; and

(v) The foreign broker or dealer provides the Commission, upon request or, if applicable, pursuant to agreements reached between any foreign jurisdiction or any foreign securities authority and the Commission or the U.S. Government, with any information, documents, or records within the possession, custody, or control of the foreign broker or dealer, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wheresoever located, that the Commission requests and that directly or indirectly relates to transactions with a U.S. institutional investor or with the registered broker or dealer that executes the transactions; or,

(2) The activities of such foreign broker or dealer are limited to:

(i) Any agency or branch of a U.S. person located outside the United States, that operates for valid business reasons;

(ii) Any affiliate or subsidiary of a U.S. person, located outside the United States, that is organized or incorporated under the laws of any foreign jurisdiction; or

(iii) The International Monetary Fund, the International Bank for Reconstruction and Development, and

the United Nations and its agencies and affiliates.

(b) When used in this rule,

(1) The term "foreign broker or dealer" shall mean any non-U.S. resident entity that is neither an office nor a branch of a U.S. broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of "broker" or "dealer" in sections 3(a)(4) and 3(a)(5) of the Act.

(2) The term "U.S. institutional investor" shall mean a person that is both:

(i) (A) (*1*) A broker or dealer registered with the Commission under section 15(b) of the Act;

(*2*) An investment company registered with the Commission under section 8 of the Investment Company Act of 1940, if the investment company itself, or any family of investment companies of which it is a part, has total assets in excess of $100 million; or

(*3*) Any investment adviser registered with the Commission under section 203 of the Investment Advisers Act of 1940, that has total assets under management in excess of $100 million; or

(B) An accredited investor as defined in 17 CFR 230.501(a) (1), (2), or (3) (not including a broker or dealer registered with the Commission under section 15(b) of the Act, or an investment company registered with the Commission under section 8 of the Investment Company Act of 1940) that has total assets in excess of $100 million; and

(ii) (A) Organized or incorporated under the laws of the United States or its territories or possessions, or any state or the District of Columbia;

(B) Organized or incorporated under the laws of any foreign jurisdiction, if its business is conducted principally in the United States; or

(C) A branch of a foreign entity, which branch is located in the United States or its territories or possessions.

(3) The term "foreign associated person" shall mean any natural person resident outside the United States who is an associated person, as defined in section 3(a)(18) of the Act, of a foreign broker or dealer and who participates in solicitation of a U.S. institutional investor.

(4) The term "family of investment companies" shall mean:

(i) Except for insurance company separate accounts, any two or more separately registered investment companies under the Investment Company Act of 1940 that share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services; and

(ii) With respect to insurance company separate accounts, any two or more separately registered separate accounts under the Investment Company Act of 1940 that share the same investment adviser or principal underwriter and function under operational or accounting or control systems that are substantially similar.

By the Commission.

Jonathan G. Katz,

Secretary.

June 14, 1988.

Regulatory Flexibility Act Certification

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that proposed Rule 15a–6 set forth in Securities Exchange Act Release No. 25801, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that (i) the exemption from broker-dealer registration under the proposed rule would be limited to foreign broker-dealers which need not be considered under 5 U.S.C. 603; and (ii) to the extent that the proposed rule, if adopted, would impose any costs on registered domestic broker-dealer affiliates of such foreign broker-dealers or have a competitive effect on other domestic broker-dealers those costs are not significant and would not impact a substantial number of small domestic broker-dealers.

Dated: June 14, 1988.

David S. Ruder,

Chairman.

[FR Doc. 88–14177 Filed 6–22–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Public Affairs

22 CFR Part 9b

[SD–215]

Regulations Governing Department of State Press Building Passes

AGENCY: Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: Since publication in the Federal Register in 1984 of the Department of State regulations governing press building passes, alterations have been made in procedures for physical access to the Main Department of State building to improve the safeguarding of the Department's personnel and classified and Limited Official Use material. To adjust to these access alterations, the Department of State proposes to change its regulations governing Department of State press building passes to reflect the following: That only State Department press building passes will be recognized by the automated access control system established in March 1988; that access by media correspondents and technicians with State Department press building passes is now limited after office hours and on weekends and holidays to designated areas without an escort; and that other procedures concerning the purpose, issuance, application and renewal procedures for a Department of State press building pass are being changed.

These proposed changes are being made to provide publicly available guidelines to the media on new access requirements for the Main Department of State building and to provide publicly available guidance on the procedures for issuance of a Department of State press building pass.

DATES: Comments must be received by July 25, 1988.

ADDRESSES: Comments should be sent to Director, Office of Press Relations, Room 2109, Department of State, 2201 C Street NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Nancy Beck at 202–647–2492.

SUPPLEMENTARY INFORMATION: The Department of State amends its regulations governing Department of State press building passes (22 CFR Part 9b) by proposing changes to identify and describe the means by which media correspondents and technicians may gain access to the Main Department of State building after the installation of an automated access control system established in March 1988, as well as access to the Main Department of State building outside of regular working hours and on weekends and holidays.

The Department of State also proposed changes which will better inform media correspondents and technicians as to the purposes of and procedures for issuing a Department of State press building pass.

Additionally, proposed changes have been made to reflect the current names of individuals and Department bureaus responsible for issuance of Department of State press building passes.

The Department of State voluntarily publishes these regulations in proposed form to allow for public comment.

This proposed rule is not a major rule for the purposes of Executive Order 12991 of February 17, 1981. As required by the Regulatory Flexibility Act, this proposed rule will not have a significant impact on small business entities. This

proposed rule does not contain information collection requirements under the Paperwork Reduction Act of 1980.

List of Subjects in 22 CFR Part 9b

Administrative practice and procedure, Federal buildings and facilities, News media, Security measures.

For the reasons set forth in the preamble, the Department of State proposes to amend 22 CFR Part 9b as follows:

PART 9b—[AMENDED]

1. The authority citation for 22 CFR Part 9b continues to read as follows:

Authority: 22 U.S.C. 2658.

2. Section 9b.1 revised to read as follows:

§ 9b.1 Press access to the Department of State.

(a) Media correspondents without valid Department of State press building passes shall have access to the Main State building identical to that enjoyed by members of the public.

(b) Media correspondents holding valid Department of State press building passes:

(1) May enter and have access 24 hours a day, during regular working hours, outside regular working hours, on weekends and on holidays, without an appointment, to the reception area of the Diplomatic Lobby, Street Mezzanine area, press booths (Room 2310), press briefing room (Room 2118), and when in operation, the Office of Press Relations (Room 2109).

(2) May enter and have access without an appointment, on the basement level or on the first and second floors, to the cafeteria, post office, banks, concessionaries, barber shop, dry cleaners and the Foreign Affairs Recreation Association offices for the purposes for which they are established and when they are in operation.

(3) May not escort non-passholders into the Department of State building.

(c) Media correspondents, with or without a Department of State press building pass, may enter areas above the second floor of the Main State building only if the correspondent is invited by a Departmental employee to attend a specific social or official function in an office located above the second floor. Permission to enter areas above the second floor is strictly limited to direct passage to and from the appointment location of the Department of State employee, or the office or reception room where the function takes place.

(d) Possession of State Department press building pass does not confer access to or other privileges at other Federal buildings. It is not to be construed as official United States Government recognition, approval or accreditation of a correspondent.

3. Section 9b.2 is amended by removing paragraph (c) and revising the heading and introduction and paragraphs (a)(1),(a)(3), and (b) to read as follows:

§ 9b.2 Press correspondents employed by United States media organizations.

In order to obtain a Department of State press building pass, press correspondents employed by United States media organizations must:

(a) * * *

(1) That the applicant is a bona fide, full-time media correspondent based permanently and residing in the Washington, DC., metropolitan area:

* * * * *

(3) That the organization and the applicant have regular and substantial assignments in connection with the Department of State as evidenced by regular attendance at the daily press briefings.

(b) Submit to the Office of Press Relations, Department of State, Washington, DC 20520, a signed application and FORM DSP–97 for a press building pass. Applicants must comply with instructions contained in paragraphs 1 and 6 of FORM DSP–97 regarding fingerprinting and prior arrests. FORM DSP–97 requires the following information:

(1) Name.

(2) Affiliation with news media organizations.

(3) Date of birth.

(4) Place of birth.

(5) Sex.

(6) Citizenship.

(7) Social Security or passport number.

(8) Marital status.

(9) Spouse name.

(10) Office address and telephone number.

(11) Length of employment.

(12) Home address and telephone number.

(13) Length of residence.

4. Section 9b.3 is amended by removing paragraph (d) and revising paragraphs (a)(1), (a)(3) and (c) to read as follows:

§ 9b.3 [Amended]

* * * * *

(a) * * *

(1) That the applicant is a bona fide, full-time media correspondent based permanently and residing in the Washington, DC, metropolitan area:

* * * * *

(3) That the organization and the applicant have regular and substantial assignments in connection with the Department of State as evidenced by regular attendance at the daily press briefings.

* * * * *

(c) Submit to the Office of Press Relations, Department of State, Washington, DC 20520 a signed application and FORM DSP–97 for a press building pass. Applicants must comply with instructions contained in paragraphs 1 and 6 of FORM DSP–97 regarding fingerprinting and prior arrests. FORM DSP–97 requires the following information:

(1) Name.

(2) Affiliation with news media organizations.

(3) Date of birth.

(4) Place of birth.

(5) Sex.

(6) Citizenship.

(7) Social Security or passport number.

(8) Marital status.

(9) Spouse name.

(10) Office address and telephone number.

(11) Length of employment.

(12) Home address and telephone number.

(13) Length of residence.

5. Section 9b.4 is revised to read as follows:

§ 9b.4 Department of State building press passes for technical crews.

Department of State press building passes are issued to members of television and radio technical crews who provide technical support on a daily basis for media correspondents assigned to the Department of State. Members of technical crews who do not possess press passes, but who provide technical support for media correspondents assigned to the Department of State, may apply to the Office of Press Relations for a visitor's pass valid for one day.

6. Section 9b.5 is revised to read as follows:

§ 9b.5 Temporary Department of State press building passes.

A media correspondent or technician who meets all the qualifications stated in § 9b.2(a)(1) and (a)(2) or 9b.3(a) and (b), but does not have regular and substantial assignments in connection with the Department of State may make

arrangements with the Office of Press Relations for the issuance of a visitor's pass valid for one day.

7. Section 9b.6 is amended by adding paragraph (e) and revising the introductory text and paragraphs (a) and (c) to read as follows:

§ 9b.6 [Amended]

In consultation with the Bureau of Diplomatic Security and the Office of the Legal Adviser, the Director of the Office of Press Relations of the Department of State, may deny, revoke, or not renew the Department of State press building pass of any media correspondent or technician who:

(a) Does not meet the qualifications stated in § 9b.2(a)(1), (a)(2) and (a)(3) or 9b.3(a)(1), (2), (3) and (b). (Upon denial, revocation, or non-renewal the correspondent or technician may not re-apply for a period of one year unless there are material changes in meeting the qualifications.) Or,

* * * * *

(c) Engages or engaged in conduct which there are reasonable grounds to believe might violate Federal or State law or Department of State regulations.

* * * * *

(e) Fails to claim an approved authorization form for a State Department press building pass after notification by the Office of Press Relations following a period of three (3) months.

8. Section 9b.7 is amended by revising paragraphs (a), (e), (f)(1), (f)(3), and (g) to read as follows:

§ 9b.7 [Amended]

(a) If the Director of the Office of Press Relations, Department of State, anticipates, after consultation with the Office of the Legal Adviser, that in applying the standard set forth in § 9b.6 a Department of State press building pass might be denied, revoked or not renewed, the media correspondent or technician will be notified in writing by the Director of the basis for the proposed denial in as much detail as the security of any confidential source of information will permit. This notification will be sent by registered mail.

* * * * *

(e) At the time of the filing of the media correspondent's or technician's written response to the notification of the proposed denial, revocation or non-renewal, the correspondent or technician may request, and will be granted, the opportunity to make a personal appearance before the Director of the Office of Press Relations, Department of State, for the purpose of personally supporting his/her eligibility for a press pass and to rebut or explain the factual basis for the proposed denial. The Director shall exercise, in consultation with the Bureau of Diplomatic Security and the Office of the Legal Adviser, final review authority in the matter. The correspondent or technician may be represented by counsel during this appearance.

(f)(1) On the basis of the correspondent's or technician's written and personal response and the factual basis for the proposed denial, revocation or non-renewal, the Director of the Office of Press Relations, Department of State, will consult with the Bureau of Diplomatic Security and the Office of the Legal Adviser to determine whether or not further inquiry or investigation concerning the issues raised is necessary.

* * * * *

(3) If a decision is made that such further inquiry is necessary, the Director of the Office of Press Relations of the Department of State, the Bureau of Diplomatic Security and the Office of the Legal Adviser will conduct such further inquiry as is deemed appropriate. At the Director's discretion the inquiry may consist of:

(i) The securing of documentary evidence:

(ii) Personal interviews:

(iii) An informal hearing:

(iv) Any combination of paragraphs (f)(3)(i) through (f)(3)(iii) of this section.

(g) On the basis of the correspondent's or technician's written and personal response, the factual basis for the proposed denial and the additional inquiry provided for if such inquiry is conducted, the Director of the Office of Press Relations of the Department of State will consult with the Bureau of Diplomatic Security and the Office of the Legal Adviser and expeditiously reach a final decision in accordance with the standard set forth in § 9b.6. If a final adverse decision is reached, the correspondent or technician will be notified of this final decision in writing. This notification will set forth as precisely as possible, and to the extent that security considerations permit, the factual basis for the denial in relation to the standard set forth in § 9b.6. This notification will be sent by registered mail and will be signed by the Director of the Office of Press Relations of the Department of State.

9. Section 9b.8 is revised to read as follows:

§ 9b.8 Term and renewal of Department of State press building passes.

Department of State press building passes are valid for either three (or four) years. Department of State press building pass holders must, nevertheless, submit a letter annually from their employing media organizations attesting that they continue to cover the Department of State for that organization on a regular and substantial basis. If the correspondent fails to supply such a letter by a previously announced date, his/her press building pass will be subject to revocation as set out in § 9b.7.

Dated: April 20, 1988.

Ronald I. Spiers,

Under Secretary of State for Management.

[FR Doc. 88-14140 Filed 6-22-88; 8:45 am]

BILLING CODE 4710-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-962-86]

Income Taxes; Definition of Functional Currency; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains a correction to a notice of proposed rulemaking by cross-reference to temporary regulations that were published in the **Federal Register** for Friday, June 3, 1988 (53 FR 20337). The rules relate to the definition of a taxpayer's functional currency.

FOR FURTHER INFORMATION CONTACT: David Rosenberg of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, 202-634-5406 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed regulations by cross-reference to temporary regulations (T.D. 8208) that is the subject of this correction relates to income tax regulations under section 985 of the Internal Revenue Code of 1986. Section 985 introduces a new statutory concept that requires all Federal income tax determinations to be made in a taxpayer's functional currency.

Need for Corrections

As published, the notice of proposed rulemaking by cross-reference to temporary regulations contains a typographical error that might cause

confusion to taxpayers and practitioners.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking by cross-reference to temporary regulations, which was the subject of FR Doc. 88–12563, is corrected as follows:

Paragraph 1. On page 20338, column 1, the next to the last line under the heading "Proposal of Regulations", the language "section 989 of the Internal Revenue" is removed and the language "section 985 of the Internal Revenue" is added in its place.

Dale D. Goode,

Chief, Technical Section, Legislation and Regulations Division.

[FR Doc. 88–14193 Filed 6–22–88; 8:45 am]

BILLING CODE 4830-01-M

---

26 CFR Parts 1, 301, and 602

[INTL–061–86]

Foreign Tax Credit; Notification and Adjustment Due to Foreign Tax Redeterminations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed Income Tax Regulations and Regulations on Procedure and Administration relating to a taxpayer's obligation under section 905 (c) of the Internal Revenue Code of 1986 to file notification of a foreign tax redetermination, to make adjustments to a taxpayer's pools of foreign taxes and earnings and profits, and the imposition of the civil penalty for failure to file such notice or report such adjustments. In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed before August 22, 1988. These rules would generally apply to taxable years beginning after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (INTL–061–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Eli J. Dicker, of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 (Attention: CC:LR:T (INTL–061–86)) (202–566–3490, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Internal Revenue Service, with copies to the Internal Revenue Service, Washington, DC 20224, Attention: IRS Reports Clearance Officer TR:FP.

The collection of information in this regulation is in §§ 1.905–3T, 1.905–4T, and 1.905–5T. This information is required by the Internal Revenue Service to enable it to effectively administer the provisions of section 905 (c). The information is needed by the Service to verify pooling adjustments to account for the effect of foreign tax redeterminations and to recompute a United States taxpayer's United States tax liability when a foreign tax redetermination requires such a recomputation. The likely respondents are individuals, households, businesses, and other for-profit institutions. Estimated total annual reporting burden: 10,000 hours. Estimated average annual burden per respondent: one hour. Estimated number of respondents: 10,000. Estimated annual frequency of responses: as necessary to comply with the provisions of section 905 (c).

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 1.905–3T, 1.905–4T, and 1.905–5T to 26 CFR Part 1. They also add § 301.6689–1T to 26 CFR Part 301. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR Parts 1, 301, and 602. For the text of the temporary regulations, see for DOC. 88–14073 [T.D. 8210], published in the Rules and Regulations portion of this issue of the **Federal Register.**

Special Analyses

These proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the notice and public procedure requirements of 5 U.S.C. § 553 do not apply because the regulations proposed herein are interpretative. Therefore, an initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is Eli J. Dicker, of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both on matters of substance and style.

List of Subjects

26 CFR 1.861–1 through 1.997–1

Income taxes, United States investments aboard, Foreign currency, Foreign tax credit.

26 CFR 301.6654–1 through 301.6696–1

Income taxes, Administration and procedure, Penalties.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposal of regulations

The temporary regulations, FR Doc. 88–14073 [T.D. 8210], published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under sections 905(c)(and 6689.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–14074 Filed 6–22–88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Public Comment Period and Opportunity for Public Hearing on Proposed Modifications to the Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a proposed amendment concerning citizen suits submitted by the State of Colorado. If approved, this amendment would resolve condition ("ee") which the Secretary of the Interior placed on the approval of the Colorado Permanent Regulatory Program (hereinafter referred to as the Colorado program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This notice sets forth the times and locations that the Colorado program and the proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearings.

DATES: Written comments not received on or before 4:00 p.m., m.d.t. July 25, 1988, will not necessarily be considered..

If requested, a public hearing on the proposed modifications will be held on July 18, 1988, beginning at 10:00 a.m., at the location shown under **"ADDRESSES."** Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. July 8, 1988.

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Robert H. Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102

If a public hearing is requested, it will be held at OSMRE Western field Operations, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado 80202.

Copies of the Colorado program, the proposed amendment to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Albuquerque Field Office listed under **"ADDRESSES."** The aforementioned documents are available for review at the following locations:

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486

Office of Surface Mining Reclamation and Enforcement, Room 5131, 1100 L Street NW., Washington, DC 20240, Telephone: (202) 343–5492

Colorado Mined Land Reclamation Division, 423 Centennial Building, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866–3567.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Colorado program under SMCRA for the regulation of surface coal mining operations on December 15, 1980. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Colorado program, can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Conditions of approval of the program and subsequent actions concerning the program amendments are identified at 30 CFR 906.11 and 906.15.

II. Submission of Amendment

On July 22, 1987, Colorado submitted, for OSMRE's review and approval, a statute to the Colorado program which addresses the Secretary's condition to the Colorado program listed at 30 CFR 906.11(ee) (Administrative Record No. CO–354).

The condition at 30 CFR 906.11(ee) requires Colorado to either amend its program or submit a statute to comply with the requirement of section 520(b)(2) of SMCRA. Colorado has revised its statute at CRS 34–33 135(2)(b) to address this program condition.

Under the revised statute, citizens can immediately, after notifying the State in writing, commence a civil action against the State in those situations where the violation or order that the citizen complains of would "immediately affect" (not "irreparably damage" as the statute previously stated) a legal interest of the plaintiff.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is seeking comment on whether the proposed amendment satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If OSMRE finds the amendment in accordance with SMCRA and no less effective than the Federal regulations, it will approve the amendment to become part of the Colorado program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the OSMRE Albuquerque Field Office will not necessarily be considered and included in the Administrative Record for this proposed rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business July 8, 1988. If no one requests to comment, a public hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the result of the meeting included in the Administrative Record.

Filing of a written statement at the time the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those persons scheduled. The hearing will end after all persons who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE Denver, Colorado office listed in **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: June 14, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88-14197 Filed 6-22-88; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3403-6]

Hazardous Waste Management System; Identification and Listing Proposed Exclusions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant petitions submitted by Bethlehem Steel Corporation, Steelton, Pennsylvania, and Johnstown, Pennsylvania, to exclude certain solid wastes generated at their facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. These actions respond to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decisions are based on an evaluation of waste-specific information provided by the petitioners.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioners. This model has been used in evaluating the petitions to predict the concentration of hazardous constituents released from the petitioned wastes, once they are disposed.

DATES: EPA is requesting public comments on today's proposed decisions and on the applicability of the fate and transport model used to evaluate these petitions. Comments will be accepted until August 8, 1988. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on these proposed decisions and/or the model used in the petition evaluations by filing a request with Bruce Weddle, whose address appears below, by July 8, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-BSEP-FFFFF."

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Linda Cessar, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9828.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3(c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used To Evaluate These Petitions

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the wastes and, is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned wastes after disposal and to determine the potential impact of the unregulated disposal of Bethlehem's petitioned wastes on human health and the environment. Specifically, the model will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this model represents a reasonable worst case waste disposal scenario for the petitioned wastes, and that a reasonable worst case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate for the Delisting Program to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Bethlehem is seeking upfront delistings (*i.e.*, an exclusion for wastes generated from a laboratory-scale treatment process), ground-water monitoring data collected from the areas where the petitioner plans to dispose of the wastes are not necessary. Because the petitioned wastestreams are not currently generated or disposed of, ground-water data would not characterize the effects of the petitioned wastes on the underlying aquifer at the disposal sites, and thus, would serve no purpose.

Bethlehem petitioned the Agency for upfront exclusions (for wastes that have not yet been generated) based on a laboratory-scale waste treatment process (*i.e.*, a scaled down version of a proposed treatment system), untreated waste characteristics, and process descriptions. Additionally, the Agency is proposing that verification testing requirements (*i.e.*, required analytical testing of representative samples obtained from the full-scale treatment systems verifying that the treatment systems are on-line and operating as described in the petition) be made conditions of the exclusions. These conditions, if the exclusions are granted, will be implemented in order to show that, once on-line, the treatment systems can render the wastes non-hazardous by meeting the Agency's verification testing limitations (*i.e.*, the maximum allowable levels of the hazardous constituents of concern present in the wastes, below which, the wastes would not be considered hazardous).

From the evaluation of Bethlehem's upfront delisting petitions, lists of constituents were developed for the verification testing and tentative maximum allowable treated waste concentrations for these constituents were derived by back calculating from the regulatory standards through the use of the proposed fate and transport model for a landfill management scenario. These levels (*i.e.*, "delisting levels") are proposed conditions of the delistings.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know what treatment levels for constituents should be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delisting will allow new facilities to receive exclusions prior to generating waste, which, without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities could be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional batch testing requirements to submit data verifying that the delisting levels are achieved by the fully operational manufacturing/treatment systems will maintain the integrity of the delisting program and will ensure that only non-hazardous wastes are removed from Subtitle C control.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, final decisions will not be made on these petitions proposed today until all public comments (including those at requested hearings, if any) are addressed.

II. Disposition of Petitions

A. Bethlehem Steel Corporation, Steelton, Pennsylvania

1. Petition for Exclusion

Bethlehem Steel Corporation (Bethlehem), located in Steelton, Pennsylvania, produces reinforcing bars, billets, and associated rail products. Bethlehem petitioned the Agency to exclude its chemically stabilized electric arc furnace dust, presently listed as EPA Hazardous Waste No. K061—"Emission control dust/sludge from the primary production of steel in electric furnaces." The listed constituents of concern for K061 waste are cadmium, chromium, and lead. Bethlehem petitioned to exclude its waste because it does not believe that the waste meets the criteria for which it was listed. Bethlehem also believes that its treatment process will generate a non-hazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. Bethlehem further believes that the waste is not hazardous for any other reason. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d) (2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Bethlehem's petition.

2. Background

Bethlehem petitioned the Agency to exclude its chemically stabilized electric arc furnace dust (CSEAFD) on October 22, 1985 and subsequently provided additional information to complete its petition. In support of its petition, Bethlehem submitted (1) detailed descriptions of its manufacturing and proposed waste treatment processes;[1] (2) a list of all the raw materials used in both the manufacturing and treatment processes; (3) results from total constituent, EP toxicity, and multiple extraction procedure (MEP) analyses (used to assess stabilized wastes) for all the EP toxic metals, nickel, and cyanide from representative samples of the CSEAFD as generated using a bench scale treatment system; and (4) results from total constituent analyses for total sulfide, and results from total oil and grease analyses on representative waste samples. Once Bethlehem's full-scale treatment system is on-line, EPA proposes that Bethlehem be required to perform analyses for EP leachate concentrations of all the EP toxic metals, nickel, and cyanide, and total constituent concentrations of total reactive sulfide and total reactive cyanide on batches of treated waste (see section 6 — *Verification Testing Conditions*).

Bethlehem produces its rail-related products by processing steel scraps in three 22-foot diameter, fifty megawatt Lectromelt top charge electric arc furnaces (EAFs). The scrap steel is melted and refined in the furnace when an electric arc surges between the electrodes and scrap. When the molten steel reaches 3000 degrees Fahrenheit, it is poured into a ladle and cast into blooms or poured into ingot molds.

The EAFs produce dust during (1) melting of scrap, (2) pouring molten steel, (3) pneumatic injection of additives, (4) oxygen blowing, and (5) meltdown/refining periods. The EAF dust is collected in two bag houses.

The EAF dust is then mixed with weighed amounts of certain chemicals in a prescribed ratio in accordance with Bethlehem's proprietary processing sequence. Bethlehem tested laboratory-scale levels of stabilized waste derived from an experimental treatment unit. Data from this unit were submitted as the basis for an upfront delisting. Bethlehem plans to construct a full-scale mixing and stabilization facility if their laboratory-scale system produces treated wastes that supports an upfront delisting decision. The chemically stabilized EAF dust would be disposed in Bethlehem's on-site non-hazardous waste monofill landfill, if the exclusion is granted.

To collect representative samples from EAF baghouses like Bethlehem's, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over time (*e.g.*, grab samples collected every hour and composited by shift, etc.). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Bethlehem initially collected a total of 21 grab samples of the untreated EAF dust from the storage silo on 16 different days between March 3, 1986 and June 30, 1986. Each sample was collected in a five gallon container and sent to Bethlehem's laboratory for sterilization and curring (*i.e.*,, hardening). Six samples of the fully curred samples were analyzed for total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste), and multiple extraction procedure (MEP) leachate concentrations (*i.e.*, mass of a particular constituent per unit volume of extract), for all the EP toxic metals, nickel, and cyanide. The six samples of the fully curred material were also analyzed for total constituent concentrations of sulfide and for total oil and grease content. Twelve samples of the fully curred material were analyzed for EP toxicity concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extraction). Nine samples of the uncured material were analyzed for EP toxicity concentrations of cadmium, chromium, and lead.

During the period of November 11, 1987 through November 18, 1987, Bethlehem collected an additional five samples of its EAF dust. Bethlehem stabilized these five samples using its CSEAFD treatment process and then performed and EP toxicity analyses on each of the uncured (*i.e.*, unhardened) samples for all the EPA toxic metals, nickel, and cyanide (using distilled water in the cyanide extraction). Bethlehem claims that, due to a consistent manufacturing and treatment process, the analysis from the samples collected during the initial four month period and the additional one week period are representative of any variation in CSEAFD constituent concentrations.

3. Agency Analysis

Bethlehem used SW–846 method numbers 7040–7760, 9010, and 9030 to quantify the total constituent concentrations of all the EP toxic metals, nickel, cyanide, and sulfide. Bethlehem used SW–846 method numbers 1310 (standard EP) and 1320 (MEP) to quantify the leachable concentrations of the EP toxic metals, nickel, and cyanide in their waste. Table 1 presents the maximum total constituent concentrations of the EP toxic metals, nickel, cyanide, and sulfide. Table 2 presents the maximum EP leachate values of the EP toxic metals, nickel, and cyanide, obtained from the analyses of both the uncured and fully cured samples. Table 3 presents the maximum MEP leachate values of the EP toxic metals, nickel,

[1] Bethlehem claimed that its CSEAFD treatment process is confidential and proprietary; therefore, the Agency is handling information on Bethlehem's CSEAFD treatment process as Confidential Business Information (CBI).

and cyanide, obtained from fully cured samples. (Analysis for EP or MEP leachable concentrations of sulfide (or reactive sulfide) is not necessary since the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide.) Detection limits represent the lowest concentrations quantifiable by Bethlehem, when using the appropriate SW-846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limit.)

TABLE 1.—MAXIMUM TOTAL CONSTITUTENT CONCENTRATIONS CSEAFD

Constitutents	Total Constitutent concentrations (mg/kg)
Arsenic	ND (below detection limit of 20).
Barium	ND (below detection limit of 500).
Cadmium	200.
Chromium	900.
Lead	12,000.
Mercury	ND (below detection limit of 1).
Selenium	200.
Silver	10.
Nickel	ND (below detection limit of 5).
Cyanide	ND (below detection limit of 20).
Sulfide	ND (below detection limit of 5).

ND: Not Detected. Denotes concentration below the detection limit.

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS CURED AND UNCURED CSEAFD

Constituents	EP leachate concentrations (mg/l)
Arsenic	ND (below detection limit of 0.02).
Barium	1.9.
Cadmium	0.03.
Chromium	0.16.
Lead	0.1.
Mercury	ND (below detection limit of 0.002).
Selenium	ND (below detection limit of 0.05).
Silver	ND (below detection limit of 0.05).
Nickel	ND (below detection limit of 0.1).
Cyanide	ND (below detection limit of 01.).[1]

ND: Not Detected. Denotes concentration below the detection limit.

[1] Cyanide extraction performed using distilled water instead of the 0.5N acetic acid solution normally used, in order to prevent the volatilization of cyanide.

TABLE 3.—MAXIMUM MEP LEACHATE CONCENTRATIONS CSEAFD (MG/L)

Constituents	Concentration days								
	1	2	3	4	5	6	7	8	9
Arsenic	ND	ND	ND	ND	ND	ND	ND	ND	ND
Barium	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cadmium	0.02	ND	ND	ND	ND	ND	ND	ND	ND
Chramium	0.08	0.06	0.05	0.05	0.05	0.05	ND	ND	ND
Lead	ND	ND	ND	ND	ND	ND	ND	ND	ND
Mercury	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nickel	ND	ND	ND	ND	ND	ND	ND	ND	ND
Selenium	0.01	0.02	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Silver	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cyanide [1]									

ND: Not Detected. Denotes concentration below the following detection limits: Arsenic and Cadmium—0.02; Barium—1.0; Chromium and Silver—0.05; Lead—0.01; Mercury—0.001; and Nickel—0.1.

[1] Multiple extraction analyses were not completed due to the sufficiently low total constituent concentrations (*i.e.*, assuming the 20:1 liquid to solid ratio of the EP toxicity test and 100 percent leaching, the worst-case extract concentration would be below the level of regulatory concern).

Using SW-846 method number 3540, Bethlehem determined that its waste had a maximum oil and grease content of 0.06 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of the constituent of concern in the oil phase, which would not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching out of the metals from the sample). See SW-846 method number 1330. None of the samples analyzed exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

Bethlehem submitted a signed certification stating that based on current annual waste generation and laboratory-scale mixing ratio of reagent to EAF dust, its maximum annual generation rate of CSEAFD will be 50,000 cubic yards. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Bethlehem's certified estimate of 50,000 cubic yards.

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant Bethlehem's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may select to visit this facility in the future for spot-sampling.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for stabilized wastes and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modelling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters, to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of Bethlehem's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of all the inorganic constituents (except arsenic,

mercury, silver, nickel, and cyanide—see explanation below) from Bethlehem's CSEAFD waste. The Agency's evaluation, using the CSEAFD volume of 50,000 cubic yards and the maximum EP leachate concentrations of all the inorganic constituents of concern in the VHS model, generated the compliance-point concentrations shown in Table 4. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, mercury, silver, nickel, and cyanide) from Bethlehem's waste because they were not detected in the EP extract using the appropriate SW–846 analytical test methods (see Table 2). The Agency believes it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modelling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 4.—VHS: CALCULATED COMPLIANCE-POINT CONCENTRATIONS LISTED AND NON-LISTED CONSTITUENTS CSEAFD

Constituents	Compliance-point concentrations (mg/1)	Regulatory standards (mg/1)
Barium	0.30	1.0
Cadmium	0.0047	0.01
Chromium	0.026	0.05
Lead	0.0158	0.05
Selenium	0.0032	0.01

The CSEAFD exhibited barium, cadmium, chromium, lead, and selenium levels at the compliance point below the levels prescribed by the National Primary Drinking Water Regulations (NPDWR). See 40 CFR Part 141.

The Agency used the MEP test to assess the long-term stability of Bethlehem's stabilized waste. In this procedure a sample of Bethlehem's stabilized waste was ground and passed through a 100x mesh screen in order to determine whether the metals are chemically bound in the waste matrix. Once a sample was prepared, a series of nine synthetic acid rain extractions was performed in order to determine whether the metals would leach from the waste matrix over time. The MEP data reported in Table 3 indicate that the CSEAFD treatment residue exhibits long-term stability by leaching non-hazardous levels of metals after multiple extractions.

Because the concentration of total cyanide is less than 20 mg/kg, the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, internal Agency memorandum in the RCRA public docket.

Lastly, because the total constituent concentration of sulfide is less than 5 mg/kg, the Agency believes that the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, internal Agency memorandum in the RCRA public docket.

The Agency concluded, after reviewing Bethlehem's processes and raw materials list, that no other hazardous constituents of concern are being used by Bethlehem, and that no other constituents of concern are likely to be present or formed as reaction products or by-products of Bethelem's waste. In addition, the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

5. Conclusion

The Agency believes that Bethlehem's CSEAFD treatment system can render the K061 wastes non-hazardous. The Agency believes that the samples of treated waste analyzed reflect the day-to-day variations in manufacturing and treatment processes for both the particular grades of scrap used and the particular grades of steel produced during the demonstration period and that are intended to be used and produced, respectively, thereafter. The Agency, therefore, is proposing that Bethlehem's CSEAFD waste, if it meets certain verification testing requirements, be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant a conditional exclusion to the Bethlehem Steel Corporation, located in Steelton, Pennsylvania, for both its uncured and fully cured chemically stabilized electric arc furnace dust treatment residues described in their petition as EPA Hazardous Waste No. K061. If the proposed rule becomes effective, both the uncured and fully cured treatment residues would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

6. Verification Testing Conditions

As stated earlier, the proposed exclusion contains verification testing requirements. If the final exclusion is granted, the petitioner will be required both to verify that the treatment system is on-line and operating as described in the petition, and to show that, once on-line, the treatment system can meet the Agency's verification testing limitations (*i.e.*, "delisting levels"). These proposed conditions are specific to the upfront exclusion petitioned for by Bethlehem.

This proposed exclusion is conditional upon the following:

(1) *Testing*—(A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, Bethlehem must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. Analyses must be performed according to SW–846 methodologies. Bethlehem must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

(B) *Subsequent Testing:* The daily testing requirements of (1)(A) shall continue and the analytical test data must be reported every 90 days following the initial report required in (1)(A).

(2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/1; for barium exceeds 6.3 mg/1; for cadmium or selenium exceed 0.063 mg/1; for mercury exceeds 0.0126 mg/1; for nickel exceeds 3.15 mg/1; or for cyanide exceeds 4.42 mg/1, or total reactive cyanide or total reactive sulnide levels exceed 250 mg/kg and 500 mg/kg, (respectively, the waste must either be re-treated until it meets these levels or managed and disposed in accordance with Subtitle C of RCRA.

(3) *Termination of Testing:* The testing and reporting requirements of condition (1)(B) shall be terminated by EPA when the results of four consecutive daily composites for the petitioned waste show the maximum allowable levels in condition (2) are not exceeded and the Chief, Variances Section, notifies Bethlehem that the conditions have been lifted.

The Agency has determined, through its review of similar petitions from the iron and steel industry, that approximately four weeks are required for a facility to train operators and to collect sufficient data to verify that a full-scale stabilization process is operating correctly. Accordingly, the Agency is proposing an initial testing condition and a subsequent testing condition.

The proposed initial testing condition would require Bethlehem to collect daily composite samples during the first four weeks of operation of the full-scale treatment system. The Agency has proposed this initial testing condition

both to gather data obtained from the full-scale treatment system, and to ensure that the full-scale treatment system is closely monitored during the start-up period.

The proposed subsequent testing condition provides the Agency with final verification data showing that the full-scale treatment system is operating as described in the petition and would be initiated once the initial testing period is completed. As proposed, the subsequent testing condition would require Bethlehem to continue the daily testing and reporting requirements of the initial testing condition until EPA received the results from four consecutive daily composites of the petitioned waste showing that the maximum allowable levels (*i.e.*, the delisting levels of condition number 2) were not exceeded and the Chief, Variances Section, notified Bethlehem that the conditions had been lifted.

The Agency proposed a mechanism to terminate the testing and reporting requirements of the subsequent testing condition for the following reasons: (1) Based on the laboratory-scale data submitted by Bethlehem, the Agency believes that consistently non-hazardous wastes can be generated from the CSEAFD treatment process and thus continued testing would be excessive; and (2) termination of this condition after four consecutive daily composites meeting the delisting levels of condition number (2), is consistent with existing policy that testing may be terminated for continuously generated wastes after taking a minimum of four representative samples if those wastes are well mixed and uniformly produced. (EPA normally requests a minimum of four samples of a continuously generated waste.) See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Future upfront delisting proposals and decisions issued by the Agency may include different testing requirements based on an evaluation of the uniformity of the process and of the waste, of the waste volume (including whether there is a fixed volume of waste or an infinite source), and of other factors normally considered in the petition review process. For example, wastes with variable constituent concentrations, discussed in previous delisting decisions (*e.g.*, see 51 FR 41323, November 14, 1986), may require continuous batch testing.

(4) *Data submittals:* All data must be submitted to the Chief, Variances Section, PSPD/OSW (WH-563), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified in (1)(A) and (1)(B), respectively. Failure to submit the required data will be considered by the Agency sufficient basis to revoke Bethlehem's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

(Name of Certifying Person)

(Title of Certifying Person)

Date

If made final, the proposed exclusion will only apply to the processes and volumes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered or if the percentage of each different type of scrap metal (*i.e.*, high iron, home scrap, heavy melting, and light melting) used to charge the furnace falls outside the percent range of each type of scrap metal historically used to charge the furnaces (as documented in the petition), and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

B. Bethlehem Steel Corporation, Johnstown, Pennsylvania

1. Petition for Exclusion

Bethlehem Steel Corporation (Bethlehem), located in Johnstown, Pennsylvania, produces reinforcing bars, rods, and wire. Bethlehem petitioned the Agency to exclude its chemically stabilized electric arc furnace dust, presently listed as EPA Hazardous Waste No. K061—"Emission control dust/sludge from the primary production of steel in electric furnaces." The listed constituents of concern for K061 waste are cadmium, chromium, and lead. Bethlehem petitioned to exclude its waste because it does not believe that the waste meets the criteria for which it was listed. Bethlehem also believes that its treatment process will generate a non-hazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. Bethlehem further believes that the waste is not hazardous for any other reason. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Bethlehem's petition.

2. Background

Bethlehem petitioned the Agency to exclude its chemically stabilized electric arc furnace dust (CSEAFD) on November 20, 1986 and subsequently provided additional information to complete its petition. In support of its petition, Bethlehem submitted (1) detailed descriptions of its manufacturing and proposed waste treatment processes; [2] (2) a list of all the raw materials used in both the manufacturing and treatment processes; (3) results from total constituent, EP

[2] Bethlehem claimed that its CSEAFD treatment process is confidential and proprietary; therefore, the Agency is handling information on Bethlehem's CSEAFD treatment process as Confidential Business Information (CBI).

toxicity, and multiple extraction procedure (MEP) analyses (required for stabilized wastes) for all the EP toxic metals, nickel, and cyanide from representative samples of the CSEAFD as generated using a bench scale treatment system; and (4) results from total constituent analyses for total sulfide, and total oil and grease analyses on representative waste samples. Once Bethlehem's full-scale treatment system is on-line, EPA proposes that Bethlehem be required to perform analyses for EP leachate concentrations of all the EP toxic metals, nickel, and cyanide, and total constituent concentrations of total reactive sulfide and total reactive cyanide on batches of treated waste (see Section 4—*Agency Evaluation*).

Bethlehem produces its products by processing steel scraps in two 24-foot diameter, 100 megawatt Lectromelt top charge EAFs. The scrap steel is melted and refined in the furnace when an electric arc surges between the electrodes and scrap. When the molten steel reaches 3000 degrees Fahrenheit, it is poured into a ladle and cast into blooms or poured into ingot molds.

The EAFs produce dust during (1) melting of scrap, (2) pouring molten steel, (3) pneumatic injection of additives, (4) oxygen blowing, and (5) meltdown/refining periods. The EAF dust is collected in a bag house.

The EAF dust is then mixed with weighed amounts of certain chemicals in a prescribed ratio in accordance with Bethlehem's proprietary processing sequence. Bethlehem tested laboratory-scale levels of stabilized waste derived from an experimental treatment unit. Data from this unit were submitted as the basis for an upfront delisting. Bethlehem plans to construct a full-scale mixing and stabilization facility if their laboratory-scale system produces treated wastes that support an upfront delisting decision. The chemically stabilized EAF dust will be disposed in Bethlehem's on-site non-hazardous waste dedicated landfill, if the exclusion is granted.

To collect representative samples from EAF baghouses like Bethlehem's, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over time (*e.g.*, grab samples collected every hour and composited by shift, etc.). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Bethlehem initially collected a total of 21 grab samples of the untreated EAF dust from the storage silo on 21 different days between May 27, 1986, and July 3, 1986. Each sample was collected in a five gallon container and sent to Bethlehem's laboratory for stabilization and curring (*i.e.*, hardening). Six samples of the fully curred material were analyzed for total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste), and multiple extraction procedure (MEP) leachate concentrations (*i.e.*, mass of a particular constituent per unit volume of extract), for all the EP toxic metals, nickel, and cyanide. The six samples of the fully curred material were also analyzed for total constituent concentrations of sulfide and for total oil and grease content. Twelve samples of the fully cured material were analyzed for EP toxicity concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extraction). Nine samples of the uncured (*i.e.*, unhardened) material were analyzed for EP toxicity concentrations of cadmium, chromium, and lead.

During the period of September 15, 1987 through December 29, 1987, Bethlehem collected an additional five samples of its EAF dust. Bethlehem treated these five samples using its CSEAFD treatment process and then performed an EP toxicity analysis on each of the uncured samples for all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extraction). Bethlehem claims that, due to a consistent manufacturing and treatment process, the analyses from the samples collected during the initial five week period and the additional three month period are representative of any variation in CSEAFD constituent concentrations.

3. Agency Analysis

Bethlehem used SW–846 method numbers 7060–7740, 9010, and 9030 to quantify the total constituent concentrations of all the EP toxic metals, nickel, cyanide, and sulfide. Bethlehem used SW–846 method numbers 1310 (standard EP) and 1320 (MEP) to quantify the leachable concentrations of the EP toxic metals, nickel, and cyanide in their waste. Table 5 presents the maximum total constituent concentration of the EP toxic metals, nickel, cyanide, and sulfide. Table 6 presents the maximum EP leachate values of the EP toxic metals, nickel, and cyanide, obtained from the analyses of both the uncured and fully cured samples. Table 7 presents the maximum MEP leachate values of the EP toxic metals, nickel, and cyanide, obtained from fully cured samples. (Analysis for EP or MEP leachable concentrations of sulfide (or reactive sulfide) is not necessary since the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide.) Detection limits represent the lowest concentrations quantifiable by Bethlehem, when using the appropriate SW–846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limit.)

TABLE 5.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS CSEAFD

Constituents	Total constituent concentrations (mg/kg)
Arsenic	30.
Barium	ND (below detection limit of 1000).
Cadmium	200.
Chromium	1200.
Lead	7000.
Mercury	ND (below detection limit of 2).
Selenium	40.
Silver	ND (below detection limit of 100).
Nickel	1000.
Cyanide	ND (below detection limit of 50).
Sulfide	ND (below detection limit of 50).

ND: Not Detected. Denotes concentrations below the detection limit.

TABLE 6.—MAXIMUM EP LEACHATE CONCENTRATIONS CURED AND UNCURED CSEAFD

Constituents	EP leachate concentrations (mg/1)
Arsenic	ND (below detection limit of 0.02).
Barium	2.0.
Cadmium	0.02.
Chromium	0.18.
Lead	0.15.
Mercury	ND (below detection limit of 0.002).
Selenium	ND (below detection limit of 0.05).
Silver	ND (below detection limit of 0.05).
Nickel	ND (below detection limit of 0.01).
Cyanide	ND (below detection limit of 0.01).[1]

ND: Not Detected. Denotes concentrations below the detection limit.

[1] Cyanide extraction performed using distilled water instead of the 0.5N acetic acid solution normally used, in order to prevent the volatilization of cyanide.

TABLE 7.— MAXIMUM MEP LEACHATE CONCENTRATIONS CSEAFD (MG/L)

Constituents	Concentration days								
	1	2	3	4	5	6	7	8	9
Arsenic	ND	ND	ND	ND	ND	ND	ND	ND	ND
Barium	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cadmium	0.02	ND	ND	ND	ND	ND	ND	ND	ND
Chromium	0.11	0.09	0.08	0.07	0.05	ND	ND	ND	ND
Lead	ND	ND	ND	ND	ND	ND	ND	ND	ND
Mercury	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nickel	ND	ND	ND	ND	ND	ND	ND	ND	ND
Selenium	0.02	0.01	0.02	0.02	0.04	0.04	0.04	0.02	0.02
Silver	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cyanide [1]									

ND: Not Detected: Denotes concentration below the following detection limits: Arsenic and Cadmium—0.02; Barium—0.5; Chromium and Silver—0.05; Lead—0.01; Mercury—0.002; and Nickel—0.1.

[1] Multiple extraction analyses were not completed due to the sufficiently low total constituent concentrations (*i.e.*, assuming the 20:1 liquid to solid ratio of the EP toxicity text and 100 percent leaching, the worst-case extract concentration would be below the level of regulatory concern).

Using SW–846 method number 3540, Bethlehem determined that its waste had a maximum oil and grease content of 0.06 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of the constituent of concern in the oil phase, which would not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching out of metals from the sample). See SW–846 method number 1330. None of the samples analyzed exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

Bethlehem submitted a signed certification stating that based on current annual waste generation and laobratory-scale mixing ratio of reagent to EAF dust, its maximum annual generation rate of CSEAFD will be 81,400 cubic yards. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Bethlehem's certified estimate of 81,400 cubic yards.

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant Bethlehem's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may select to visit this facility in the future for spot-sampling.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for stabilized wastes and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modelling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters, to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of Bethlehem's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of all the inorganic constituents (except arsenic, mercury, silver, nickel, and cyanide—see explanation below) from Bethlehem's CSEAFD waste. The Agency's evaluation, using the CSEAFD volume of 81,400 cubic yards and the maximum EP leachate concentrations of all the inorganic constituents of concern in the VHS model, generated the compliance-point concentrations shown in Table 8. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, mercury, silver, nickel, and cyanide) from Bethlehem's waste because they were not detected in the EP extract using the appropriate SW–846 analytical test methods (see Table 6). The Agency believes it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modelling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 8.—VHS: Calculated Compliance-Point Concentrations Listed and Non-Listed Constituents CSEAFD

Constituents	Compliance-point Concentration (mg/1)	Regulatory standards (mg/1)
Barium	0.317	1.0
Cadmium	.0031	.01
Chromium	.0285	.05
Lead	.0237	.05
Selenium	.0063	.01

The CSEAFD exhibited barium, cadmium, chromium, lead, and selenium levels at the compliance point below the levels prescribed by the National Primary Drinking Water Regulations (NPDWR). See 40 CFR Part 141.

The Agency used the MEP test to assess the long-term stability of Bethlehem's stabilized waste. In this procedure a sample of Bethlehem's stabilized waste was ground and passed through a 100x mesh screen in order to determine whether the metals are chemically bound in the waste matrix. Once a sample was prepared, a series of nine synthetic acid rain extractions was performed in order to determine whether the metals would leach from the waste

matrix over time. The MEP data reported in Table 7 indicate that the CSEAFD treatment residue exhibits long-term stability by leaching non-hazardous levels of metals after mutliple extractions.

Because the concentration of total cyanide is less then 50 mg/kg, the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, internal Agency memorandum in the RCRA public docket.

Lastly, because the total constituent concentration of sulfide is less than 50 mg/kg, the Agency believes that the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, internal Agency memorandum in the RCRA public docket.

The Agency concluded, after reviewing Bethlehem's processes and raw materials list, that no other hazardous constituents of concern are being used by the Bethlehem, and that no other constituents of concern are likely to be present or formed as reaction products or by-products of Bethlehem's waste. In addition, the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

5. Conclusion

The Agency believes that Bethlehem's CSEAFD treatment system can render the K061 wastes non-hazardous. The Agency believes that the samples of treated waste analyzed reflect the day-to-day variations in manufacturing and treatment processes for both the particular grades of scrap used and the particular grades of steel produced during the demonstration period and that are intended to be used and produced, respectively, thereafter. The Agency, therefore, is proposing that Bethlehem's CSEAFD waste, if it meets certain verification testing requirements, be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant a conditional exclusion to the Bethlehem Steel Corporation, located in Johnstown, Pennsylvania, for both its uncured and fully cured chemically stabilized electric arc furnace dust treatment residues described in their petition as EPA Hazardous Waste No. K061. If the proposed rule becomes effective, both the uncured and fully cured treatment residues would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

6. Verification Testing Conditions

As stated earlier, the proposed exclusion contains verification testing requirements. If the final exclusion is granted, the petitioner will be required both to verify that the treatment system is on-line and operating as described in the petition, and to show that, once on-line, the treatment system can meet the Agency's verification testing limitations (*i.e.*, "delisting levels"). These proposed conditions are specific to the upfront exclusion petitioned for by Bethlehem.

This proposed exclusion is conditional upon the following:

(1) Testing—(A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, Bethlehem must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composities, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. Analyses must be performed according to SW–846 methodologies. Bethlehem must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

(B) *Subsequent Testing:* The daily testing requirements of (1)(A) shall continue and the analytical test data must be reported every 90 days following the initial report required in (1)(A).

(2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/1; for barium exceeds 6.3 mg/1; for cadmium or selenium exceed 0.063 mg/1; for mercury exceeds 0.0126 mg/1; for nickel exceeds 3.15 mg/1; or for cyanide exceeds 4.42 mg/1, or total reactive cyanide or total reactive sulfide levels exceeds 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated until it meets these levels or managed and disposed in accordance with Subtitle C of RCRA.

(3) *Termination of Testing:* The testing and reporting requirements of condition (1)(B) shall be terminated by EPA when the results of four consecutive daily composites for the petitioned waste show the maximum allowable levels in condition (2) are not exceeded and the Chief, Variances Section, notifies Bethlehem that the conditions have been lifted.

The Agency has determined, through its review of similar petitions from the iron and steel industry, that approximately four weeks are required for a facility to train operators and to collect sufficient data to verify that a full-scale stabilization process is operating correctly. Accordingly, the Agency is proposing an initial testing condition and a subsequent testing condition.

The proposed initial testing condition would require Bethlehem to collect daily composite samples during the first four weeks of operation of the full-scale treatment system. The Agency has proposed this initial testing condition both to gather data obtained from the full-scale treatment system, and to ensure that the full-scale treatment system is closely monitored during the start-up period.

The proposed subsequent testing condition provides the Agency with final verification data showing that the full-scale treatment system is operating as described in the petition and would be initiated once the initial testing period is completed. As proposed, the subsequent testing condition would require Bethlehem to continue the daily testing and reporting requirements of the initial testing condition until EPA received the results from four consecutive daily composites of the petitioned waste showing that the maximum allowable levels (*i.e.*, the delisting levels of condition number 2) were not exceeded and the Chief, Variances Section, notified Bethlehem that the conditions had been lifted.

The Agency proposed a mechanism to terminate the testing and reporting requirements of the subsequent testing condition for the following reasons: (1) Based on the laboratory-scale data submitted by Bethlehem, the Agency believes that consistently non-hazardous wastes can be generated from the CSEAFD treatment process and thus continued testing would be excessive; and (2) termination of this condition after four consecutive daily composites meeting the delisting levels of condition number (2), is consistent with existing policy that testing may be terminated for continuously generated wastes after taking a minimum of four representative samples if those wastes are well mixed and uniformly produced. (EPA normally requests a minimum of four samples of a continuously generated waste.) See "Test Methods for Evaluation Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Future upfront delisting proposals and decisions issued by the Agency may include different testing requirements based on an evaluation of the unformity of the process and of the waste, of the waste volume (including whether there is a fixed volume of waste or an infinite

source), and of other factors normally considered in the petition review process. For example, wastes with variable constituent concentrations, discussed in previous delisting decisions (*e.g.*, see 51 *FR* 41323, November 14, 1986), may require continuous batch testing.

(4) *Data submittals:* All data must be submitted to the Chief, Variances Section, PSPD/OSW (WH-563), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified in (1)(A) and (1)(B), respectively. Failure to submit the required data will be considered by the Agency sufficient basis to revoke Bethlehem's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

(Name of Certifying Person)

Date

(Title of Certifying Person)

If made final, the proposed exclusion will only apply to the processes and volumes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered or if the percentage of each different type of scrap metal (*i.e.*, high iron, home scrap, heavy melting, and light melting) used to charge the furnace falls outsside the percent range of each type of scrap metal historically used to charge the furnances (as documented in the petition), and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that these exclusions should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant exclusions is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding wastes generated at two specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that that rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to two facilities. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.
Date: June 7, 1988.

Jeffery D. Denit,
Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * * * *
Bethlehem Steel Corporation	Steelton, Pennsylvania	Chemically stabilized electric arc furnace dust/sludge (CSEAFD) treatment residue (EPA Hazardous Waste No. K061) generated from the primary production of steel after [insert date of final rule's publication]. This exclusion is conditioned upon the data obtained from Bethlehem's full-scale CSEAFD treatment facility because Bethlehem's original data was obtained from a laboratory-scale CSEAFD treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, Bethlehem must implement a testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid: (1) *Testing:* (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, Bethlehem must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. Analyses must be performed according to SW-846 methodologies. Bethlehem must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) *Subsequent Testing:* The daily testing requirements of (1)(A) shall continue and the analytical test data must be reported every 90 days following the initial report required in (1)(A). (2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, or total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated until it meets these levels or managed and disposed in accordance with Subtitle C of RCRA. (3) *Termination of Testing:* The testing and reporting requirements of condition (1)(B) shall be terminated by EPA when the results of four consecutive daily composites for the petitioned waste show the maximum allowable levels in condition (2) are not exceeded and the Chief, Variances Section, notifies Bethlehem that the conditions have been lifted. (4) *Data submittals:* All data must be submitted to the Chief, Variances Section, PSPD/OSW (WH-563), U.S. EPA, 401 M Street SW., Washington, DC 20460 within the time period specified in (1)(A) and (1)(B), respectively. Failure to submit the required data will be considered by the Agency sufficient basis to revoke Bethlehem's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."
Bethlehem Steel Corporation	Johnstown, Pennsylvania	Chemically stabilized electric arc furnace dust/sludge (CSEAFD) treatment residue (EPA Hazardous Waste No. K061) generated from the primary production of steel after [insert date of final rule's publication]. This exclusion is conditioned upon the data obtained from Bethlehem's full-scale CSEAFD treatment facility because Bethlehem's original data was obtained from a laboratory-scale CSEAFD treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, Bethlehem must implement a testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid: (1) *Testing:* (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, Bethlehem must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. Analyses must be performed according to SW-846 methodologies. Bethlehem must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) *Subsequent Testing:* The daily testing requirements of (1)(A) shall continue and the analytical test data must be reported every 90 days following the initial report required in (1)(A). *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, or total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated until it meets these levels or managed and disposed in accordance with Subtitle C of RCRA. (3) *Termination of Testing:* The testing and reporting requirements of condition (1)(B) shall be terminated by EPA when the results of four consecutive daily composites for the petitioned waste show the maximum allowable levels in condition (2) are not exceeded and the Chief, Variances Section, notifies Bethlehem that the conditions have been lifted. (4) *Data submittals:* All data must be submitted to the Chief, Variances Section, PSPD/OSW (WH-563), U.S. EPA, 401 M Street SW., Washington, DC 20460 within the time period specified in (1)(A) and (1)(B), respectively. Failure to submit the required data will be considered by the Agency sufficient basis to revoke Bethlehem's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."
*	*	* * * * * * *

[FR Doc. 88-14149 Filed 6-22-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-253, RM-6162]

Radio Broadcasting Services; Avon, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Rocky Mountain Wireless, Inc., licensee of Station KZYR(FM), Channel 276A, Avon, Colorado, seeking the substitution of Channel 276C2 for Channel 276A and modification of its license accordingly. Reference coordinates utilized for this proposal are 39-36-58 and 106-26-57.

DATES: Comments must be filed on or before August 1, 1988, and reply comments on or before August 16, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Howard M. Liberman and Jonathan V. Cohen, Esqs., Arter & Hadden, 1919 Penn. Avenue NW., Suite 400, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-253, adopted May 3, 1988, and released June 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14209 Filed 6-22-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-260, RM-6161 and RM-6293]

Radio Broadcasting Services; Mio and Harbor Springs, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two petitions for rule making. The petitions are mutually exclusive. David C. Schaberg requests the substitution of FM Channel 281C2 for Channel 280A at Mio, Michigan, and modification of his construction permit for Channel 280A (BPH 851216ML) to specify operation on Channel 281C2. A site restriction 10.4 kilometers west of the community is required to accommodate the substitution. Running Rhodes, Inc. proposes the substitution of FM Channel 280C2 for Channel 280A at Harbor Springs, Michigan and modification of its permit for Channel 280A (BPH 850613MB) to specify operation on Channel 280C2. The allotment can be made at Harbor Springs, Michigan if Channel 280A is removed from Mio, Michigan. The petitioner has proposed the substitution of Channel 272A for Channel 280A at Mio. The coordinates used for Channel 281C2 at Mio are 44-40-00 and 84-15-30. The coordinates used for Channel 280C2 at Harbor Springs are 45-29-02 and 84-58-00. Canadian concurrence must be obtained for the allotment of either channel.

DATES: Comments must be filed on or before August 1, 1988, and reply comments on or before August 16, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

David C. Schaberg, 6250 S. Cedar, Suite 12B001, Lansing, Michigan 48911-5715

Running Rhodes, Inc., Howard Binkow, President, 4824 Lower Shore Drive, Harbor Springs, Michigan 49740

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-260, adopted May 9, 1988, and released June 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transportation Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14210 Filed 6-22-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-259, RM-5892 and RM-6292]

Radio Broadcasting Services; Faribault and Blooming Prairie, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on three petitions for rule making. The petitions are mutually exclusive. KDHL, Inc. requests the substitution of FM Channel 298C2 for Channel 240A at Faribault, Minnesota, and modification of its license for

Station KDHL to specify operation on the new channel. The Commission has also received a request from Richard Johnson requesting the allotment of Channel 298C2 to Faribault as its second FM Channel. The third petition was filed by Blooming Prairie Development Corporation proposing the allotment of FM Channel 299A to Blooming Prairie, Minnesota, as that community's first FM service. There is a site restriction 11.8 kilometers southwest for Channel 298C2 at Faribault at coordinates 44–14–14 and 93–23–41. Channel 299A at Blooming Prairie has a site restriction 10.7 kilometers east at coordinates 43–51–25 and 92–55–10.

DATES: Comments must be filed on or before August 1, 1988, and reply comments on or before August 16, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Richard J. Hayes, 1359 Black Meadow Road, Spotsylvania, Virginia 22553 (Counsel for KDHL, Inc.).
Richard Johnson, 1044 Westwood Drive, Faribault, Minnesota 55021.
Christopher J. Reynolds, Dempsey and Koplovitz, 1401 New York Avenue NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–259, adopted May 4, 1988, and released June 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Steve Kaminer

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–14211 Filed 6–22–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87–06; Notice 2]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates rulemaking on daytime running lamps (DRLs), originally proposed by the agency on March 24, 1987, as an item of optional motor vehicle lighting equipment. One objective of the proposal was to facilitate sale in the United States of vehicles manufactured in Canada where daytime running lamps will be mandatory by the end of the decade. However, a survey of manufacturers disclosed none who planned to take advantage of the option. Further, because a final rule could run counter to some State laws governing daytime use of motor vehicle lighting equipment, the agency has determined under Executive Order 12612 that there is no national safety need requiring its adoption. However, the agency is encouraging the American Association of Motor Vehicle Administrators and other revelant groups to eliminate any State restrictions that would preclude use of DRLs.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA, Washington, DC (202–366–5276).

SUPPLEMENTARY INFORMATION: Implementing the grant of petitions for rulemaking submitted by the Insurance Institute for Highway Safety (IIHS) and the Traffic Safety Board of Nassau County (New York), NHTSA proposed on March 24, 1987, that a motor vehicle could be equipped, at its manufacturer's option, with a front-mounted lamp, or lamps, that would operate during the daytime when the ignition is on (52 FR 9316). IIHS argued that such a requirement would promote safety, preempt potentially conflicting state legislation, and further international harmonization of standards.

IIHS had concluded through its own experiments using a fleet of over 2000 vehicles throughout most of the United States that there was a 7 percent difference in the ratio of relevant reported crashes to total multiple vehicle crashes for modified vehicles compared with control vehicles, noting that this, however, was somewhat less than had occurred in two Scandinavian countries where the lamps have been mandatory. It also found that some States forbid use of parking lamps without the headlamps, or the use of parking lamps "for illumination", thus presenting unnecessary and unintended restrictions on DRLs. It also concluded that an amendment was especially appropriated because Canada had proposed DRLs and their allowance in the United States would further the cause of international harmonization of safety standards.

NHTSA tentatively agreed that clarification of State laws was necessary for installation and use of DRLs on motor vehicles. Further, to the extent that cars manufactured in Canada for sale in the United States are equipped with DRLs, NHTSA sought to ensure that there is no legal inhibition to their introduction and use in this country. However, it could not conclude that DRL's should be mandated; the benefits ascribed to DRLs could be due in part to the different ambient light levels in the Northern latitudes, given the fact that the IIHS study conducted in the U.S. showed a lesser benefit than the Scandinavian experience. Thus, the agency proposed that installation be optional with the manufacturers.

Comments by manfacturers tended to oppose, rather than support, the proposal. When contacted by NHTSA representatives, manfacturers and their trade organizations such as Motor Vehicle Manufacturers Association and Automobile Importers of America said they had no plans to take advantage of the proposed option. Finally, the agency has taken inot consideration Executive Order 12612 "Federalism" which was issued after the publication of the proposal. The purpose of the Order is to limit Federal preemption of State laws, unless preemption is necessary to address a national safety need. Since a national safety need warranting mandating DRL's was not clearly demonstrateds when the proposal was issued, and an amendment would have a

preemptive effect, this was a further reason not to adopt the proposal. NHTSA is therfore terminating rulemaking on this subject.

However, the agency believes that there may be potential merit in the use of DRLs in this country, and plans to monitor any safety benefit studies made by the Canadian Government. It also plans to work with the States to remove any legislation that would prevent the types of DRL that will be used in Canada, and has asked the American Association of Motor Vehicle Administrators and will ask the National Committee on Uniform Traffic Laws and Ordinances to urge State in potential conflict with DRLs to revise any laws that might prohibit or inhibit their use.

(15 U.S.C. 1392, 1407; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: June 16, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-14141 Filed 6-22-88; 8:45am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List Sabal miamiensis (Miami Palmetto) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Service gives notice of the withdrawal of the proposed regulation to list *Sabal miamiensis* (Miami palmetto) as endangered, pursuant to the Endangered Species Act of 1973, as amended. This palm, restricted to Dade County, Florida, was proposed as endangered on November 4, 1986. Based on evaluation of comments and data available following publication of the proposed regulation, the Service has determined that *Sabal miamiensis* should be withdrawn from consideration for listing as an endangered species because it appears to be an invalid taxon.

ADDRESSES: The complete file for this proposed action is available for inspection, by appointment during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216 (904/791-2580 or FTS 946-2580).

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Field Supervisor, at the above. **"ADDRESS."**

SUPPLEMENTARY INFORMATION:

Background

Sabal miamiensis (Miami palmetto) was described by Zona in 1985, based on material from Broward and Dade Counties, Florida. The plant is currently restricted to Dade County, where only a few survive. Zona separated *Sabal miamiensis* from its widespread relatives *Sabal palmetto)* and *Sabal etonia* by a suite of characters including large fruit size, lack of an above-ground trunk, and three orders of branching in the flower stalk. The plant was apparently always been restricted to the pine rocklands of Broward and Dade Counties. This habitat type has been almost completely eliminated by residential and commercial development.

Based on this information, and comments received from other Florida botanists, the Service proposed *Sabal miamiensis* as an endangered species, pursuant to the Endangered Species Act of 1973, as amended (Act), in the Federal Register of November 4, 1986 (51 FR 40051). The proposal solicited comments and information on *Sabal miamiensis* from any interested parties.

One of the comments received following the proposal indicated that there was substantial scientific disagreement concerning the taxonomic status of *Sabal miamiensis*. In a letter dated January 23, 1987, Dr. Robert W. Read of the Smithsonian Institution, a botanist specializing in palms, indicated his belief that *Sabal miamiensis* represented a peripheral population of *Sabal etonia* (scrub palmetto), a widespread Florida species. Dr. Read has accumulated a large amount of information on variation in the genus *Sabal* in Florida, and finds that the characters used to separate *Sabal miamiensis* fall within the range of variation found in populations of *Sabal etonia*. Dr. Read has examined the remaining living plants described as *Sabal miamiensis* in Dade County, and feels that they represent the southernmost population of *Sabal etonia*, not a new species. Service botanists subsequently met with Dr. Read to review his unpublished data and to discuss this problem with him.

The comment period was reopened to extend the deadline for making a final decision and to allow for further information to be received (Federal Register, July 21, 1987; 52 FR 27347). This was in accordance with section 4(b)(6)(B)(i) of the Act, which allows a 6-month extension of the 1-year deadline within which the Service must ordinarily take final action on a proposed regulation to list a species. The deadline for final action was therefore extended to May 4, 1988.

The Service contacted several botanists to obtain further comments on the taxonomic status of *Sabal miamiensis*, but Mr. Zona and Dr. Read appear to be the only individuals who have evaluated the status of the palm.

Five other comments were received supporting listing of *Sabal miamiensis* as an endangered species, but only Mr. Zona's letter contained comments addressing the taxonomic question. Dr. Read's comments oppose the listing of *Sabal miamiensis* on the grounds that this population does not merit taxonomic recognition.

The Service believes that Dr. Read's unpublished data are substantial enough to place the taxonomic validity of *Sabal miamiensis* in doubt. *Sabal miamiensis*, therefore, fits category 3B in the Service's September 27, 1985 plant notice of review (50 FR 39526); that is, a species which does not meet the Act's definition of "species", but which may be reevaluated in the future on the basis of subsequent research. Mr. Zona and Dr. Read both intend to publish further on *Sabal* systematics. In the event that this disagreement is resolved in favor of *Sabal miamiensis* representing a distinct species or variety, the Service will reevaluate whether listing of *Sabal miamiensis* pursuant to the Act is appropriate. Therefore, it is possible that the species will again be proposed as endangered or threatened.

Based on the best currently available commercial and scientific data, however, the Service has concluded that the proposal to list *Sabal miamiensis* as an endangered species should be withdrawn at this time.

References Cited

Zona, S. 1985. A new species of *Sabal* (Palmae) from Florida. Brittonia 37(4):366-368.

Author

The primary author of this notice is Dr. Michael M. Bentzien, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216 (904/791-2580 or FTS 946-2580).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 3, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-14248 Filed 6-22-88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 53, No. 121
Thursday, June 23, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Valle Vidal Area Amendment to the Carson National Forest Land Management Plan, Carson National Forest, Taos and Colfax Counties, NM; Intent To Prepare an Environmental Impact Statement Delay

Purpose and Need: The Department of Agriculture, Forest Service, will prepare an environmental impact statement for the management of the Valle Vidal Management Area on the Carson National Forest. This environmental analysis will establish the integrated management prescriptions for the area. It will be developed under regulations pursuant to the National Environmental Policy Act (NEPA) (40 CFR Parts 1500–1508) and the National Forest Management Act (NFMA) (36 CFR Part 219).

In early 1982, the Pennzoil Company of Houston, Texas, donated 101,794 acres of its 492,560-acre Vermejo Ranch in northeastern New Mexico to the people of the United States through the Forest Service, U.S. Department of Agriculture. It is now a part of the Carson National Forest.

The area is known as the Valle Vidal Area (formerly called the Vermejo Unit) and is administered for its resource values consisting of minerals, timber, grazing, fisheries, and wildlife etc. Outstanding scenic and recreation values have been made available for public enjoyment. Outdoor recreation opportunities include camping, hiking, fishing, hunting, cross-country skiing, and birdwatching.

The Multiple Use Area Guide was approved April 7, 1983, and provides interim management direction for the area. The Decision Notice directs that the management of the area be "multiple use managemnt of the land for its unique combination of wildland resources, primarily public outdoor recreation, continued timber production, forage for livestock and wildlife, unique wildlife habitat and watershed."

Interim implementation plans are in effect for managing resources such as: Forage allocation, recreation management, access, etc. in accord with the coordinating requirements in the multiple use area guide.

Forest Plan: The Carson Forest Plan was implemented in December 1986. The Record of Decision for the Forest Plan EIS (October 31, 1986) deferred the allocation decision on the Valle Vidal to this environmental analysis.

The purpose of this analysis is to define the issues relevant to integrated resource allocations for the Valle Vidal Area, Management Area 21, evaluate alternative management strategies for addressing the identified issues, and recommend the management strategy which will provide the greatest net public benefits from this management area. The results will be compatible with, and become part of the Carson Forest Plan as the Valle Vidal Management Area (page 230 in Forest Plan).

Issues, Concerns and Opportunities: A number of issues and/or concerns have been raised by the public, New Mexico Department of Game and Fish, and Forest Service personnel. Many issues relevant to management of the area were identified during the Forest planning process and during preparation of the various documents guiding present management of this area. A number of public involvement activities have been conducted to identify issues relevant to management of the area.

A number of potential issues have been identified. Many of these are not relevant to the purpose of determining the best integrated resource allocations for this management area. Others are more appropriate for analysis of site specific projects and others are indicators of an underlying allocation issue. Potential issues have been screened and selected as the major issues to be analyzed, i.e., riparian/watershed condition, wildlife, fish, etc.

Public Comments: The Carson National Forest has initiated the scoping process. Individuals, groups and agencies are encouraged to participate or keep themselves informed. Contact: Land Management Planning, Carson National Forest, P.O. Box 558, Taos, New Mexico 87571 — (505) 758–6200. A draft of the EIS originally scheduled to be published in April, 1988, is now scheduled to be published in January, 1989. A document outlining work done to date, including an overview and a list of the decisions to be made (issues), is being sent out to those who have expressed an interest in this analysis.

Decision Maker: The Regional Forester is the responsible official who will decide on the management strategy to be implemented on the Valle Vidal Area, Management Area 21.

John C. Bedell,
Forest Supervisor.
June 13, 1988.

[FR Doc. 88–14220 Filed 6–22–88; 8:45 am]
BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

North Dakota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the North Dakota Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 noon, on August 26, 1988, at the Doublewood Ramada Inn, 1400 East Interchange Avenue, Bismarck, North Dakota. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Bryce Streibel or Philip Montez, Director of the Western Regional Division, (213) 894–3437 (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 15, 1988.

Susan J. Prado,
Acting Staff Director.

[FR Doc. 88–14129 Filed 6–22–88; 8:45 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 70470-8021]

Electronic Data Dissemination Policies and Guidelines

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Proposed amendment of electronic data dissemination policies and guidelines; request for public comment.

SUMMARY: The U.S. Patent and Trademark Office (PTO) has undertaken a program to automate its operations. As a result, electronic patent and trademark data are being created and new techniques are being implemented to expand the use of the PTO's collection of electronic information, which will contain all U.S. patents and registered trademarks and selected foreign patents. These data bases comprise one of the largest information resources of the Nation.

To fulfill its mission to disseminate information and to guide the management of its electronic information resources, on June 8, 1984, the PTO issued guidelines and policies for dissemination and distribution of electronic patent data. These were published in 49 **Federal Register** 24585 (June 14, 1984). Subsequently, the Office of Management and Budget issued revised policies and expanded guidelines for electronic data dissemination in OMB Circular A–130 dated December 1985 and entitled "Management of Federal Information Resources."

On August 20, 1987, PTO published in 52 **Federal Register** 31442 a notice (1) to inform the public of the PTO's intention to amend its pricing policy for data base products, and to expand the scope of its dissemination policies and guidelines to encompass patent and trademark electronic data; (2) to explain the current situation with regard to public access to automated patent and trademark search rooms and libraries; and (3) to solicit public comments on the intended proposals.

On December 10, 1987, PTO published in 52 **Federal Register** 46815 a notice amending the pricing policy for data base products and expanding the scope of the policies and guidelines to encompass patent and trademark data. That notice also extended the period to December 31, 1987 for receiving public comments on alternatives for funding public access to patent or trademark search rooms or libraries.

The purpose of this notice is to inform the public of the PTO's intention to publish a comprehensive edition of the policies and guidelines and to solicit comments about them. The proposed policies and guidelines in this notice would replace the policies and guidelines published in the June 14, 1984 and December 10, 1987 notices.

DATE: Comments should be submitted no later than August 24, 1988.

ADDRESS: Comments should be addressed to: Donald J. Quigg, Assistant Secretary and Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Bradford R. Huther at 703–557–1572.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office (PTO) has determined that this notice is not a major rule within the meaning of section 1(b) of Executive Order 12291. Therefore, a Regulatory Impact Analysis has not nor will be prepared. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this amended policy statement by the Administrative Procedure Act (5 U.S.C. 553(b)(A)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared. The PTO has also determined that this notice has no federalism implications affecting the relationship between the national government and the States as outlined in Executive Order 12612. This notice does not contain a collection of information for purposes of the Paperwork Reduction Act.

Background

In response to Pub. L. 96–517, the 1980 legislation which amended patent and trademark laws, the PTO prepared and submitted a plan for the automation of its operations to Congress on December 13, 1982. The plan centered on two basic concepts: The creation of electronic data bases that (1) would eventually replace the PTO's all-paper patent and trademark files, and thereby improve their integrity and quality; and (2) would support searches, examinations, office actions and other office functions through electronic workstations which would provide text and image retrieval capabilities and perform other automation functions.

Active Federal trademark registrations have been converted to an electronic data base of textual and digital image data. A computer system has been installed to enable examiners to search the data base for textual data and codes describing designs, and to retrieve and display all information as a substitute for paper file searches.

An Automated Patent System (APS) has been installed for test and evaluation purposes, using one patent examining group as an operational testbed. Major operational components of APS—large scale computers with conventional magnetic storage devices, a high-speed local area data communications network, and electronic workstations equipped with two high resolution graphic displays and laser printers—were interconnected on July 1, 1986 to enable system test and evaluation to begin in the testbed group. Optical disk storage units were subsequently installed to house the test data base of digital images of U.S. and foreign patents. Other equipment needed to simulate the system's performance under full workload conditions has been installed and is being evaluated.

The text of U.S. patents issued since 1975 was entered in the system to provide the data base for use with full text searching capabilities of APS. Images of all U.S. and selected foreign patents in the testbed group's search files have been converted to digital form and are being placed on optical disks for use in electronic classification and combined text classification searches. Work has begun to digitize the entire backfile of U.S. patents. Through exchange agreements with European and Japanese Patent Offices, European patents issued since 1920 and all Japanese patents have been or will be converted to a common facsimile standard and key patents will be entered for on-line retrieval.

Text search capabilities of APS are now available to all PTO examiners. A decision on the next incremental deployment of the digital image retrieval and other electronic searching capabilities is planned to be made in mid-1988. Additional system capabilities for office automation and other administrative support will be added to those already installed in the testbed over the next several months to supplement the search and retrieval capabilities. Examiners will be provided with access to commercial data bases, such as industry-specific data bases, through APS, from the electronic workstations.

At the present time, neither the trademark nor the patent automated systems has been deployed to the public search rooms. However, public evaluation of the Automated Patent System began in Jaunary 1988 and is scheduled to conclude in June 1988. It is expected that public evaluation of the

trademark automated system will be conducted in mid-year 1988, and that such system could be ready for public deployment prior to the end of the current authorization cycle, which is September 30, 1988. According to the 1987 edition of the Automation Master Plan, full deployment of the automated patent system to the public search room is scheduled for fiscal year 1991.

Under the provisions of Pub. L. 99–607, which authorizes appropriations through September 30, 1988, "The Commissioner of Patents and Trademarks may not impose a fee for use of public patent or trademark search rooms and libraries. The costs of such rooms and libraries shall come from amounts appropriated by Congress." In anticipation of the need to propose authorizing legislation for fiscal years 1989 through 1991, comments were requested regarding three potential funding alternatives to support the automated public search rooms. They are:

(1) Use of taxpayer revenues. The costs of supporting the automated public search rooms could be covered by funds appropriated specifically for that purpose by Congress. No statutory changes would be required for this option. Presently, the paper search rooms are being supported with appropriated funds. Under current funding levels and, in the absence of authority to charge fees for this purpose, the public's access to automated search rooms would be restricted. By 1995, 85%–90% of the total operating costs of the Office will be supported by fees. Progressive implementation of maintenance fees account for that income.

(2) Use of general fee revenues. The marginal costs of supporting the automated public search rooms could be apportioned as a cost of prosecuting an application or derived from the total available fee revenues collected by the PTO. Under this alternative, the costs for the automated public search rooms would be borne by all users of the patent and trademark systems. The user charge prohibitions in Pub. L. 99–607 would have to be modified to permit this option.

(3) Establish specific user charges for access to the public search rooms. Under this alternative such charges for access to the automated trademark and patent systems in the public search rooms would be consistent with the guidelines of OMB Circular A–130, and would be established through the rulemaking process. The marginal costs for the pulbic search rooms under this alternative would be borne only by those who actually use the public search rooms. A selected number of free hours would be provided to all users of the system. The user charge prohibition in Pub. L. 99–607 would have to be rescinded to permit this option.

Response to Comments on the Proposed Funding Alternatives:

The PTO received 21 letters in response to the notices published on August 20, 1987 and December 10, 1987, which extended the time for commenting on the proposed funding alternatives.

Twelve respondents advocated the use of taxpayer revenues. Four reasons generally were given to support this position: (1) Congress mandated that PTO user taxpayer revenues to provide public access to the automated search systems; (2) free access to automated search systems is instrumental to achieving Constitutional purpose of the PTO; (3) user fees would impose an undue burden on private inventors, small businesses and sole practitioners; and (4) user fees would restrict availability of public information and research.

Seven respondents supported at least some reliance on user fees for the following reasons: (1) Use of taxpayer funds is preferable but not realistic in a time of budget deficits—specific user fees for on-line access is the only alternative since the use of general fee revenues negatively impacts small inventors; (2) there should not be an unlimited 100 percent tax subsidy for online searching for full-time practitioners who charge fees for their services—a minimum service level of no charge to any customer as instituted by the National Agricultural Library should be considered; (3) PTO should establish specific user fees to cover the use of the search facilities from anywhere in the U.S. instead of any changes which give Washington, DC patent attorneys an unfair advantage; (4) PTO should consider a combination of general fee revenues and specific user charges; and (5) PTO should consider a combination of taxpayer revenues and minimal use of general fee revenues.

Two respondents addressed issues not directly related to funding alternatives.

The following comments were submitted concerning policies and guidelines not included in the amendment adopted on December 10, 1987.

Comment: One person expressed concern that PTO plans to offer data in the public search rooms which was obtained through agreements with certain commercial sources. If there is any change in the original conditions upon which the agreements were predicated, the agreements should be renegotiated.

Response: The PTO plans only to offer data in the public search room for which there are no restrictions against general dissemination. In order to access commercial data bases through the automated search system, the user will have had to have established an account with the data base vendor.

Comment: One person stated that the PTO has no legal authority to conduct any automation project in the Patent Depository Libraries (PDLs).

Response: The PTO's activities with regard to the Patent Depository Libraries, including activities associated with automated systems, are being carried out under sections 6 and 13 of title 35, United States Code.

Comment: PTO should clarify its plans for using published nonpatient literature which is private material and subject to copyright protection.

Response: PTO has not developed plans for the use of nonpatient literature in conjuntion with the Automated Patent System, pending resolution of technical and, possibly, legal issues.

Comment: One person expressed concerns about the trademark automated search system including PTO's plans for retaining paper files, applicability of the system for use by the public, and public evaluation of the system.

Response: PTO consistently has made the commitment to hold a public hearing prior to making any decision about the disposition of the paper patent or trademark files. A group of trademark practitioners and searchers has been conducting a limited prototype public evaluation, and this evaluation is being expanded. Full details were published in the *Trademark Official Gazette* date May 10, 1988.

Electronic Data Dissemination Policies and Guidelines

Dissemination in Government Public Search Facilities and Depository Libraries

It is the goal of the PTO to achieve effective, widespread dissemination of information concerning patents and Federally registered trademarks to all segments of the U.S. public.

A. The dissemination goal will be accomplished directly by the PTO by providing electronic search and retrieval services to the public in search facilities located in the PTO, in other facilities which may be established by the Government and in Patent Depository Libraries (PDLs). PDLs are Federal, State and local government, university or non-profit organization libraries designated

by the PTO to offer public access to patent collections.

B. To the extent funding is authorized and appropriated, search and retrieval services will be provided in the PTO's search facilities and PDLs either:

(1) By the PTO, using its own data bases, computers, communications equipment, and software, and/or

(2) By PTO contractors.

C. Access to commercial data bases that are available to the PTO's examiners, for example industry-specific data bases, will be furnished either through an APS workstation or a terminal furnished by data base vendors in the PTO public search facilities at commercial rates, provided the user has established a commercial account with the data base vendor.

The PTO will not act as an agent for any data base vendor in providing training for, assisting in, or collecting fees for the use of such commercial data base.

D. Services furnished in the PTO public search facilities and in PDLs will be at no cost to the public for access to PTO owned data base and systems, provided that funds are appropriated for this purpose, or the Congress specifically authorizes the establishment or use of PTO fee revenues to cover the costs of such services and such fee revenues are not required for other PTO operations. If funds for public access to the PTO's automated systems are not authorized or appropriated, search and retrieval services will principally be furnished through the use of the PTO's paper and microfilm collections and existing collections in the PDLs.

E. The type of service for public search and retrieval, either PTO or commercial services, will be chosen based on the method and criteria established by the 1983 revision to OMB Circular A-76, entitled "Performance of Commercial Activities."

Distribution of PTO Data for Commercial Dissemination

F. In addition to B. and C. above, the PTO will pursue its dissemination goal indirectly by encouraging the private sector to offer commercial patent and trademark search and retrieval services and will seek to avoid competition with private sector firms in providing such services to the public outside the PTO search facilities and PDLs.

G. Fees charged for bulk data developed by the PTO will be based on the marginal cost of providing such distribution services.

H. Normally, arrangements will be non-exclusive. Bulk resale of PTO data will be permitted subject to the terms of each bulk data sales agreement.

I. Fees charged to the public for U.S. patent and trademark data products will be based on the marginal cost of providing such products.

J. The PTO will receive non-U.S. electronic patent data through exchange agreements with other patent offices and international intergovernmental organizations. In general, the PTO will not distribute such data, except in conjunction with services that may be provided by the PTO or its contractors in the PTO public search facilities and PDLs. Rather, it will seek to have contractual arrangements established directly between the organization and the commercial data base vendor and will not act as a service agent or representative unless there is a special need that cannot be met otherwise.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

Date: June 17, 1987.

[FR Doc. 88-14159 Filed 6-22-88; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: July 13, 1988.

Time: 0800-1700 hours.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Army Family Programs will be hosted by the Deputy Chief of Staff for Personnel, Headquarters, Department of the Army. The subgroup will be provided with selected briefings on soldier and family issues to include a review of current research findings. At the conclusion of the briefings, the subgroup chair will meet with subgroup members to review arrangements and protocol to be used for their study effort. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-14163 Filed 6-22-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP88-159-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 17, 1988.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on June 9, 1988, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets:

Substitute Third Revised Sheet No. 629
Substitute Second Revised Sheet No. 630
Substitute Fifth Revised Sheet No. 631
Substitute Fourth Revised Sheet No. 631-A
Substitute Third Revised Sheet No. 632
Substitute Second Revised Sheet No. 633
Substitute Third Revised Sheet No. 634
Substitute Second Revised Sheet No. 635
Substitute Second Revised Sheet No. 636

Algonquin states that the subject revised tariff sheets are being filed in compliance with the Commission's "Blanket Order Rejecting, Accepting and Suspending Tariff Sheets Subject to Refund, Conditions and Further Review" (Blanket Order) in Docket No. RP88-152 *et. al.* Algonquin further states that, pursuant to Ordering Paragraph (F) of the Blanket Order, Algonquin is filing a revised Purchased Gas Adjustment Provision, comprised of the above listed tariff sheets, to reflect its current deferrals. The proposed effective date of the aforementioned tariff sheets is June 1, 1988.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 24, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-14120 Filed 6-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-141-000]

East Tennessee Natural Gas Co.; Technical Conference

June 17, 1988.

Pursuant to the Commission order which issued on May 25, 1988, a technical conference will be held to resolve the issues raised in the above-captioned proceeding. The conference will be held on Tuesday, June 28, 1988 at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14121 Filed 6-22-88; 8:45 am]

Billing Code 6717-01-M

[Docket No. RP88-191-000]

Tennessee Gas Pipeline Co., Filing

June 17, 1988.

Take notice that on June 10, 1988, Tennessee Gas Pipeline Company (Tennessee) filed Original Sheet Nos. 40 through 44 to Volume No. 1 of its FERC Gas Tariff:

Tennessee states that the purpose of the filing is to implement the Stipulation and Agreement (Stipulation) filed October 14, 1987 in *Tennessee Gas Pipeline Company* Docket No. RP86-119. The tariff sheets set forth the Take-or-Pay Demand Rate Surcharge for each of Tennessee's Rate Schedules CD, G and GS customers to be effective for the period July 1, 1988 through December 31, 1988. The aggregate surcharge to be collected is equal to fifty percent of the non-affiliate, non-recoupable take-or-pay costs paid by Tennessee on or before May 31, 1988. Tennessee states that amounts to be recovered have been allocated among customers based on purchase deficiencies determined by comparing firm sales in 1981-1982 (base period) to firm sales in 1983-1986.

The tariff sheets are proposed to be effective July 1, 1988 in accord with Article I, Section 7 of the Stipulation.

Tennessee states that copies of the filing have been mailed to all affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 24, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to interfere. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14122 Filed 6-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-92-002]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

June 17, 1988.

Take notice that on June 13, 1988, United Gas Pipe Line Company (United) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, and work papers related thereto, to be effective October 1, 1988.

United states that this filing is made pursuant to Ordering Paragraphs (B), (C) and (E) of the Order of the Federal Energy Regulatory Commission (Commission) issued in Docket No. RP88-92-000 on April 29, 1988.

United states that the filing amends its March 31, 1988 filing to reflect rates based on the Modified Fixed Variable method with a Demand-1 component based upon actual three-day peak deliveries and a Demand-2 component based upon Demand-2 Units nominated by customers as of May 31, 1988. Additionally, it states that an amount equal to return on equity, and related taxes associated with current storage inventory (developed using United's claimed rate of return) has been included in United's cost of service.

United states that the Commission's prescribed method for the unit-of-purchase methodology for determining its current and deferred gas costs and the appropriated dates associated with the settlement approved by the Commission in Docket No. TA87-1-11, *et al.*, and TA87-2-11. *et al.*, have been included in Section 19 of United's General Terms and Conditions.

United states that its rate sheet No. 4 series have been revised to reflect the prescribed format contained in the Commission's Regulations, § 154.305(a)(1) associated with the PGA costs.

United states that it refiled tariff sheets to exclude rates associated with those third party transporters that may be prohibited by the current Commission's policy and which have not heretofore been certified.

United states that it also submitted revised tariff sheets to eliminate the nine-month notice period requirement before discontinuance of Demand Charge payments in § 5.2 of the General Terms and Conditions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before June 24, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14123 Filed 6-22-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3403-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reductioin Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Pilot Investigation of Soil Ingestion (Amendment: Follow-up). (EPA ICR # 1356).

Abstract: EPA will conduct a follow-up measurement of soil ingestion in 20 children drawn from the group of 100 who have participated in the Agency's pilot study. Instruments of the pilot study will be utilized and the period of study will be 12 days per subject to allow an evaluation of measurement precision. Measurements of soil ingestion will also be developed for parents to test whether the protocol can be applied to adults. Response is voluntary.

Respondents: Individuals or Household
Number of Respondents: 20
Estimated Burden Per Respondent: 31 hours
Estimated Burden: 620 hours
Frequency of Collection: On occasion

Comments on the ICR should be sent to:

Carla Levesque, U.S. Environmental Proteciton Agency, Information Policy Branch (PM–223), 401 M Street SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395–3084).

Date: June 14, 1988.

Paul Lapsley,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88–14146 Filed 6–22–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3403–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Requirements for the Use of 1080 Collars for Livestock Protection. (EPA ICR #1249).

Abstract: Sodium monoflouroacetate (Compound 1080), a previously banned pesticide, was re-approved for use in a new delivery mechanism, the toxic collar. To monitor the use, effectiveness and any hazards resulting from the use of the toxic collar, the EPA requires certified applicators, registrants, and states to maintain records and report under this collection.

Burden Statement: Public reporting burden for this collection of information is estimated to average 80 hours per response for certified applicators, 64 hours per response for states, and 8 hours per response for registrants. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Respondents: Toxic Collars Applicators
Estimated No. of Respondents: 80 certified applicators, 4 states and 4 registrants.
Estimated Burden: 6,428 hours
Frequency of Collection: Annually/on Occasion.

Comments on the ICR should be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street SW, Washington, DC 20460

and

Tim Hunt Office of Management and Budget Office of Information and Regulatory Affairs 726 Jackson Place, NW. Washington, DC 20503 (Telephone (202) 395–3084).

Date: June 17, 1988.

Paul Lapsley,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88–14151 Filed 6–22–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3403–1]

Establishment of the National Advisory Council for Environmental Technology Transfer and Request for Suggestions of Candidates

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act, U.S.C. (App. I) 9(c), EPA gives notice of the establishment of the National Advisory Committee for Environmental Technology Transfer. EPA has determined that this action is in the public interest and that the Advisory Council will assist the Agency in performing its duties prescribed in the Federal Technology Transfer Act of 1986 (FTTA), Executive Order 12591, and other legislation, executive orders and regulations which authorize or mandate EPA to engage in activities associated with technology transfer.

EPA is also requesting suggestions for candidates for membership on the Advisory Committee. The membership of the Advisory Council will include a balanced representation of interested persons with professional and personal qualifications and experience to contribute to the functions of the Advisory Council and will be drawn from business and industry; the academic, educational and training community; and governmental organizations; plus environmental organizations.

DATE: Submit suggestions of candidates no later than July 25, 1988. Any interested person or organization may submit the names of qualified persons. Suggestions for the list of candidates should be identified by name, occupation, organization, position, address, and telephone number. Candidates will be asked to submit a resume of their background, experience and qualifications and other relevant information as a part of the consideration process.

ADDRESS: Submit suggestions for the list of candidates to: Agencywide Technology Transfer Staff (A–101–F6), Environmental Protection Agency, Fairchild Building, Room 605, 499 South Capitol Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: R. Thomas Parker at the above address or at 202–475–9741. The Agency will not formally acknowledge or respond to suggestions.

SUPPLEMENTARY INFORMATION: Copies of the Advisory Council charter will be filed with appropriate committees of Congress and the Library of Congress and are available upon request. The purpose of the Advisory Council is to

provide advice and counsel to the Administrator of the Environmental Protection Agency (EPA) on technology transfer issues associated with the management of environmental problems. The Advisory Council is a part of EPA's efforts to expand cooperative working relationships and to broaden the national environmental technology base. The Advisory Council will address itself to such specific technology transfer needs and issues as: Identifying the barriers impeding environmental technology transfer and training efforts and possible approaches for reducing these barriers; creating a positive institutional climate within EPA with respect to technology transfer and training activities; promoting cooperative, mutually-supportive EPA-State relationships aimed at establishing more effective environmental management at Federal, State and local levels; increasing and institutionalizing communication among all levels of government, the business community, the academic, educational and training community and the international environmental community; developing and applying an appropriate array of existing and new delivery mechanisms for meeting technology transfer and training needs; implementing the FTTA, Executive Order 12591, and other related or associated authorities; reviewing any periodic EPA reports describing the Agency's progress in implementing statutes, executive orders and regulations on technology transfer; and assessing alternative approaches for measuring the environmental benefits of technology transfer activities.

The Advisory Council meets at least twice each year, plus such meetings of subcommittees as the Council deems necessary. No honoraria or salaries are contemplated in association with membership on the Advisory Council, but compensation for travel and nominal daily expenses while attending meetings may be provided.

The Advisory Council's initial meeting will be held in the early fall of 1988.

Suggestions for the list of candidates should be submitted no later than (July 25, 1988).

Date: June 17, 1988.

Robert S. Cahill,

Associate Administrator for Regional Operations.

[FR Doc. 88-14154 Filed 6-22-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00093; FRL-3403-3]

Biotechnology Science Advisory Committee; Subcommittee on Considerations in Evaluating Small-Scale Field Trials; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee's Subcommittee on Considerations in Evaluating Small-Scale Field Trials. The meeting will be open to the public.

DATES: The meeting will be held on Friday, July 15, 1988, starting at 9 a.m. and ending at approximately 5 p.m.

ADDRESS: The meeting will be held at: 1921 Jefferson Davis Highway, Crystal Mall #2, Room 1112, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, TSCA Assistance Office, Office of Pesticides and Toxic Substances (TS-799), 401 M Street, SW., Washington, DC 20460, (202-554-1404), TDD: (202-554-0551).

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The TSCA Assistance Office will provide summaries of the meeting at a later date.

Dated: June 15, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-14152 Filed 6-22-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3403-2]

Southern Lumber Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), The Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Southern Lumber Site, Crosby, Mississippi, with the Southern Lumber Company, the Champion International Corporation and the Masonite Corporation. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Thu Kim Dao, Environmental Engineer, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, GA 30365, 404-347-5059.

Written comments may be submitted to the person above by July 25, 1988.

Date: June 14, 1988.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 88-14153 Filed 6-22-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3401-2]

St. Joseph Aquifer System, Indiana, Sole Source Aquifer Petition; Final Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination.

SUMMARY: Notice is hereby given that, under section 1424(e) of the Safe Drinking Water Act, the U.S. Environmental Protection Agency (EPA) Region V Administrator has determined that the petitioned portion of the St. Joseph Aquifer System and Tributary Valleys of the St. Joseph River Basin of Northern Indiana, hereafter called the St. Joseph Aquifer System (SJAS), is the sole or principal source of drinking water in the petitioned area, and that this aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, all Federally financially assisted projects constructed in the BVAS area and its principal recharge zone will be subject to EPA's review to insure that these projects are designed and constructed so that do not create a significant hazard to public health.

DATES: Because the economic and regulatory impact of this action will be minimal, this determination will be effective as of the date it is signed by the Regional Administrator.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Office of Ground Water 5WG-TUBB, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Wm. Turpin Ballard, Office of Ground Water, U.S. Environmental Protection Agency, Region V. at 312-353-1435.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300f, 300h–3(e), Pub. L. 93–523) states:

(e) If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Effective March 9, 1987, authority to make a Sole Source Aquifer Designation Determination was delegated to the U.S. EPA Regional Administrators.

On December 11, 1987, EPA received a complete petition from the Elkhart County Health Department (ECHD), which petitioned EPA to designate the SJAS as a Sole Source Aquifer. On January 19, 1988, EPA published notice to announce a public comment period regarding the petition. The public was permitted to submit comments and information on the petition until March 16, 1988. A public meeting on the petition was held on March 9, 1988.

II. Basis for Determination

Among the factors to be considered by the U.S. EPA in connection with the designation of an area under section 1424(e) are: (1) Whether the SJAS is the area's sole or principal source of drinking water, and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the Regional Administrator has made the following findings, which are the bases for the determintion noted above:

1. The SJAS currently serves as the "sole or principal source" of drinking water for approximately 290,000 residents, of Elkhart, St. Joseph, LaGrange, Noble, and Kosciusko Counties.

2. There is no existing alternative drinking water source or combination of sources which provides 50 percent or more of the drinking water to the designated area, nor is there any available, cost-effective potential source or combination of sources capable of replacing the drinking water needs of the communities and individuals that presently rely on the aquifer.

3. The St. Joseph Aquifer system is composed of interconnected aquifers that may be unconfined or semi-confined. Water is transmitted through primary pore space of unconsolidated glacial deposits. The highly porosity and permeability of the majority of these deposits, coupled with thin overlying soils and shallow depth of water, make the SJAS very vulnerable to contamination. Instances of contamination have already occurred, especially in the Elkhart and South Bend areas. Over 44 cases of ground water contamination have been identified in Elkhart County, alone. Potential sources for contamination include, but are not limited to: (A) Leaking chemical storage tanks, both above and below ground, (B) industrial wastewater discharges, (C) accidental release of hazardous materials, (D) use and improper storage of agricultural materials, (D) use and improper storage of agricultural chemicals, and (E) salting of roads for ice control. Should any of the above sources of contamination enter the public water supply, there could be a significant negative effect on drinking water quality, with a consequent adverse effect on public health.

III. Description of the St. Joseph Aquifer System and Tributary Valleys: Hydrogeology; Use; Recharge; Boundaries

The St. Joseph Aquifer System (SJAS), associated with the St. Joseph River Basin, lies in an area of northern Indiana that experienced multiple glacial events from three separate ice lobes. Floodplain areas of the St. Joseph River and its tributaries are relatively flat, and upland areas are hilly, rolling countryside. Major population centers in the area are located over the aquifer, and include the cities of South Bend, Elkhart, Mishawaka, and Goshen.

The juxtaposition of glacial events in time and space in this area produced extemely complex and heterogeneous sedimentary deposits. The St. Joseph Aquifer System itself appears to have originated as a major sluiceway for glacial outwash of the last Wisconsian glaciation. Outwash flowed to the southwest from Michigan through Indiana and Illinois.

Tributary Valleys along the Little Elkhart and Elkhart Rivers probably drained northwest to the main flow off of stagnating ice further south. These channelized flows left behind thick, regionally extensive deposits of sand and gravel. There appear to have been two main periods of high flow which deposited the coarse materials, and a low-flow period that sandwiched a clay layer in between. This clay layer is regionally extensive in the Tributary Valleys, but is discontinuous in the main aquifer along the St. Joseph River. The unconsolidated deposits are underlain by shale bedrock.

The sands and gravels of the SJAS and Tributary Valleys create an aquifer system capable of delivering significant quantities of good quality water to both public and private water supply wells. The deposits vary from 20 to 400 feet thick, with typical thicknesses from 40 to 120 feet. Ground water occurs in most areas at between 15 and 20 feet from the surface, and is so abundant at shallow depths that few water supply wells penetrate to bedrock. Properly listed and constructed wells will yield over 1,000 gallons per minute.

Most of the approximately 290,000 users in the aquifer service area rely on public water systems. These systems draw better than 62 million gallons per day (MGD) from the aquifer. An estimated 2 MGD is drawn from private wells. Total use of the SJAS supplies approximately 75 percent of the drinking water to the aquifer service area.

Regional ground water flow is toward the St. Joseph River from both north and south. The primary recharge mechanism that sustains this flow is the infiltration of rain and snow through the permeable soils. Infiltration rates can be as high as 20 inches per hour, making the aquifer highly vulnerable to contamination. With the water table only 15 to 20 feet down, an accidental spill could reach it within 9 hours and start migrating down gradient. There are, in fact, over 40 instances of ground water contamination in Elkhart County alone.

The project review area is the area over the aquifer and its recharge area. Streamflow source area is not relevant because streams in the area are not naturally classified as "losing streams", i.e. streams that contribute part of their flow to recharge the aquifer. The project review area is the area designated as the St. Joseph Aquifer System and Tributary Valleys by the Indiana Department of Natural Resources Aquifers Designation Map for the St. Joseph River Basin (IDNR Study, 1988).

The northern boundary is the Indiana-Michigan State line. Although a scientific boundary is preferable, there is precedent for political boundaries among previous and pending SSA designation decisions. The western boundary at South Bend, Indiana, is a hydrologic divide between the Kankakee and St. Joseph River basins. The southernmost boundary is the

divide between the St. Joseph and Tippecanoe River Basins. All other boundaries represent gradational changes in porosity, permeability, or sediment distribution.

IV. Alternative Sources

The Petitioner considered surface water and bedrock aquifers as the only potential alternatives to the SJAS to supply drinking water. The only surface water available in the event of widespread contamination of the aquifer would be the St. Joseph and Elkhart Rivers. No public water systems currently use this source because of the abundant supply of generally good quality ground water. To replace the ground water supply from the aquifer with surface water and still maintain the base flow required for NPDES permits would require construction of surface impoundments, treatment plants, and interconnections between communities.

The Petitioner conducted a cost analysis for construction, operation, and maintenance of surface impoundments on the two rivers. Based on total capital costs borrowed over 20 years at 6% interest, the annual debt service cost, plus operation maintenance, and treatment costs, show that construction of impoundments is not economically feasible. In fact, the cost of impoundments, chemicals, and operation and maintenance alone turned out to be greater than the quantitative guidance thresholds. This does not include construction of treatment plants and interconnections.

There are no bedrock aquifers in the area. The Ellsworth, Antrim and Coldwater shales underlie the glacial deposits, and more porous formations at depth contain saline water.

V. Information Utilized in Determination

The information utilized in this determination includes the petition, published State and Federal reports on the area, and various technical publications. The petition file is available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region V, Office of Ground Water, 111 W. Jackson, 10th Floor, Chicago, Illinois 60604.

VI. Project Review

EPA Region V is working with the Federal agencies that may in the future provide financial assistance to projects in the area of concern. Interagency procedures and Memoranda of Understanding will be developed through which EPA will be notifed of proposed commitments of funding by Federal agencies for projects which could contaminate the designated area of the SJAS. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including solicitation of public comments where appropriate. Should the Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial assistance may be made. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be made to plan or design the project to assure that it will not contaminate the aquifer.

Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible on existing or future State and local control mechanisms in protecting the ground water quality of the SJAS. Included in the review of any Federal financially assisted project will be coordination with State and local agencies. There comments will be given full consideration, and the Federal review process will attempt to complement and support State and local ground water protection mechanisms.

VII. Summary of Public Comments

The petition was open for public comment from January 19, 1988, to March 16, 1988. A public meeting was held on March 9, 1988, at the Elkhart City Council Chambers. Written comments received expressed support for designation. The petition was endorsed by the City of Elkhart, South Bend and Mishawaka, the Health Department of Kosciusko and St. Joseph Counties, the Department of Environmental Mangement, and The Honorable John Hiler, 3rd Congressional District Representative.

The Kosciusko County Health Department (HCHD) requested that an area adjacent to the portion of the SJAS in Kosciusko County be included in the designated area on the strength that, even though it is not in the St. Joseph River Basin, it is part of the same geologic deposit as the SJAS. The Indiana Departments of Natural Resources and Environmental management both supported this request. However, the same argument could be made for the entire Kankakee River Basin west of South Bend, so the KCHD was requested to submit a separate petition if it so desired.

Approximately 45 people attended the public meeting. There was no challenge to the eligibility of the aquifer for designation. Many of the above endorsers read letters of support into the record. The U.S. EPA representative explained the Sole Source Aquifer Program and answered questions about what it means in terms of Federal funding and project review, which were the main concerns of the questioners.

No substantial issues, other than the request by Kosciusko County, were raised during either the written comment period or at the meeting.

VIII. Economic and Regulatory Impact

Under the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby cerfity that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the "small entity" shall have the same meaning as given in section 601 of the RFA. This action is only applicable to the designated Area of the SJAS. The only affected entities will be those area-based businesses, organizations, or governmental jurisdictions that request Federal financial assistance for projects which have the potential to contaminate the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entitites will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required under other Federal laws, such as the National Environmental Policy Act (NEPA) as amended, 42 U.S.C. 4321, *et seq.* Integration of those related review procedures with Sole Source Aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices, and will not have signficant adverse effects on

competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only provides for an in-depth review of ground water protection measures, incorporating State and local measures whenever possible, for only these projects which request Federal financial assistance.

Dated: June 1, 1988.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88-14050 Filed 6-22-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-34029]

Sole Source Aquifer Determination for Fifteen Basin Aquifer Systems of New Jersey et al.

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In response to a petition from the New Jersey Department of Environmental Protection (NJDEP), notice is hereby given that the Region II Regional Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the 15 basin aquifer systems of northwest NJ, including the Delawanna Creek, Flat Brook, Lopatcong Creek, Millstone River, Musconetcong River, North Branch Raritan River, Papakating Creek, Paulins Kill, Pequest River, Pochuck Creek, Pohatcong Creek, South Branch Raritan River, Shimmers Brook, Van Campens Brook and Wallkill River Basin Aquifer Systems, underlying all of Warren County, NJ; and portions of Sussex, Passaic, Morris, Middlesex, Hunterdon, Mercer and Somerset Counties, NJ, and Orange County, NY, satisfy all determination criteria as a Sole Source Aquifer (SSA), pursuant to section 1424(e) of the Safe Drinking Water Act. The basin aquifer systems of northwest NJ are the sole source of drinking water for their aquifer service area; there are no viable alternative drinking water sources of sufficient supply; and, if contamination were to occur, it would pose a significant hazard to the public health.

As a result of this action, all Federal financially-assisted projects proposed for the area will be subject to EPA review to ensure that these projects are designed and constructed such that they do not bring about, or in any way contribute to, conditions creating a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time on July 7, 1988.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region II, Office of Ground Water Management, Room 842, 26 Federal Plaza, New York, NY 10278.

FOR FURTHER INFORMATION CONTACT: John S. Malleck, Chief, Office of Ground Water Management, EPA Region II, 26 Federal Plaza, Room 842, New York, NY 10278, (212) 264-5635.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300h-3(e), Pub. L. 93-523) states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of the determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

In November 1985, NJDEP petitioned EPA to declare the aquifer systems of the Coastal Plain, Piedmont, Highland, and Valley and Ridge Physiographic Provinces, as defined in the petition, a SSA under the provisions of the SDWA. The area specified in the petition submitted by NJDEP included the entire State of New Jersey except for the City of Trenton within the Coastal Plain and Piedmont Provinces in west-central New Jersey, and 69 communities within the Piedmont Province in northeast New Jersey.

In June 1987, NJDEP began to revise their petition to include only areas which were not designated previously, or petitioned for designation prior to their original petition. The revised petition uses a surface water drainage basin approach to define aquifer systems.

Initially 21 basin aquifer systems were to be included in the revised petition. However, the NJDEP determined that four of these were not eligible for SSA designation because of an insufficient ground water dependency. NJDEP developed the necessary documentation for the remaining 17. Subsequently, EPA determined that the NJDEP's ground water use methodology did not consider the entire aquifer service area populations. NJDEP revised the ground water use characterization to consider the entire aquifer service area, and another basin aquifer system was determined to be ineligible for SSA designation because of an insufficient ground water dependency. This reduced the number of basin aquifer systems under consideration to 16.

EPA determined that the Whippany River Basin, one of the 16, was already designated as part of the Buried Valley Sole Source Aquifer (45 FR 30537, May 8, 1980). Therefore, the area recommended for designation corresponds to the 15 basin aquifer systems of northwest New Jersey.

Public hearings were held on March 23, 1988 at the Sussex County Community College, Sparta, NJ, and on March 24, 1988 at the Hunterdon County Cooperative Extension Center, Flemington, NJ, in accordance with all applicable notification and procedural requirements. Most comments received during the comment period were in favor of designation.

II. Basis for Determination

Among the factors considered by the Regional Administrator as part of the technical review process for designating an area under section 1424(e) were: (1) Whether the aquifer is the sole or principal source (more than 50%) of drinking water for the defined aquifer service area, and that the volume of water available from all alternate sources is insufficient to replace the petitioned aquifer; and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to EPA at this time, the Regional Administrator has made the following findings in favor of designating the 15 basin aquifer systems of northwest NJ as a sole source aquifer:

1. The 15 basin aquifer systems supply more than 50 percent of the drinking water to their defined aquifer service area, and therefore, are the sole or principal source of drinking water for the residents of that area.

2. There are no reasonable alternative sources capable of supplying a sufficient quantity of drinking water to the population served by the petitioned aquifer systems.

3. The basin aquifer systems of northwest New Jersey are considered to be highly vulnerable to contamination, due to the thinness of the soils over much of the area, the shallow depth to

ground water, and the fractured nature of the bedrock. Potential sources of contamination include transportation routes, septic systems, highway, rural and urban run-off, commercial and industrial facilities, and agricultural practices. If the basin aquifer systems were to become contaminated, it would create an significant hazard to public health.

III. Description of the 15 Basin Aquifer Systems, Designated Area and Project Review Area

The basin aquifer systems underlie all of Warren County, NJ; and portions of Sussex, Passaic, Morris, Mercer, Hunterdon, Somerset and Middlesex Counties, NJ, and Orange County, NY. The aquifer systems are delineated by drainage basin divides, streams which serve as discharge points, and the northern boundary of the Coastal Plain Physiographic Province where it crosses the Millstone River Basin. The basin aquifer systems encompass approximately 1,735 square miles.

The Delawanna Creek Basin Aquifer System underlies a portion of Warren County. The area includes parts of the Townships of Blairstown, Knowlton, Hope, and White, and the Town of Belvidere.

The Flat Brook Basin Aquifer System underlies portions of Sussex and Warren Counties. The area includes parts of the Townships of Wantage, Montague, Sandyston, Frankford, Stillwater, and Walpack.

The Lopatcong Basin Aquifer System underlies a portion of Warren County. The area includes parts of the Townships of Greenwich, Harmony, Lopatcong, Oxford, Pohatcong, and White, the Borough of Alpha, and the Towns of Belvidere and Phillipsburg.

The Millstone River Basin Aquifer System underlies portions of Morris, Sussex, Warren, and Hunterdon Counties. The area includes all of Princeton Township and Hopewell, Princeton, Millstone, and Rocky Hill Boroughs; and parts of the Townships of Bridgewater, East Amwell, Franklin, Hillsborough, Hopewell, Lawrence, Montgomery, North Brunswick, Plainsboro, South Brunswick, West Amwell, and West Windsor, and the Boroughs of Manville and Pennington.

The Musconetcong River Basin Aquifer System underlies portions of Morris, Sussex, Warren, and Hunterdon Counties. The area includes all of Bloomsbury, Stanhope, and Hopat-cong Boroughs and the Town of Hackettstown; and parts of the Townships of Alexandria, Allamuchy, Bethlehem, Byram, Franklin, Green, Greenwich, Holland, Independence, Jefferson, Lebanon, Mansfield, Mount Olive, Pohatcong, Roxbury, Sparta, and Washington, the Boroughs of Glen Gardner, Hampton, Mount Arlington, Netcong, and Washington.

The North Branch Raritan River Basin Aquifer System underlines portions of Hunterdon, Morris and Somerset Counties. The area includes all of Bedminster Township and Chester, Lebanon and Peapack-Gladstone Boroughs; and parts of the Townships of Bernards, Branchburg, Bridgewater, Chester, Clinton, Hillsborough, Lebanon Mendham, Mine Hill Randolph, Readington, Roxbury, Tewksbury, and Washington, the Boroughs of Bernardsville, Califon, Far Hills, Mendham, Mount Arlington, Raritan, and Somerville, and the Town of Clinton.

The Papakating Creek Basin Aquifer System underlies a portion of Sussex County. The area includes parts of the Township of Frankford, Lefayette, Montague, Sandyston, and Wantage, and the Borough of Sussex.

The Paulins Kill Basin Aquifer System underlies portions of Warren and Sussex Counties. The area includes all of Hampton Township and Branchville Borough; and parts of the Townships of Andover, Blairstown, Frankford, Fredon, Frelinghuysen, Hardwick, Hardyston, Knowlton, Lafayette, Pahaquarry, Sandyston, Sparta, Stillwater, and Walpack, and the Town of Newton.

The Pequest River Basin Aquifer System underlies portions of Warren and Sussex Counties. The area includes all of Liberty Township and Andover Borough; and parts of the Townships of Allamuchy, Andover, Blairstown, Byram, Fredon, Frelinghuysen, Green, Hope, Independence, Knowlton, Mansfield, Oxford, Sparta Washington, and White, and Towns of Belvidere and Newton.

The Pochuck Creek Basin Aquifer System underlies portions of Sussex and Passaic Counties, NJ, and Orange County, NY. The area includes all of the Village of Warwick, NY; and parts of the Townships of Hardyston, Vernon, and West Milford, NJ and the Townships of Warwick and Chester, NY.

The Pohatcong Creek Basin Aquifer System underlies a portion of Warren County. The area includes all of Washington Borough; and parts of the Townships of Franklin, Greenwich, Harmony, Independence, Lopatcong, Mansfield, Oxford, Pohatcong, Washington, and White, and the Borough of Alpha.

The South Branch Raritan River Basin Aquifer System underlies portions of Warren, Hunterdon and Somerset Counties. The area includes all of Flemington and High Bridge Boroughs; and parts of the Township of Alexandria, Bethlehem, Branchburg, Chester, Clinton, Delaware, East Amwell, Franklin, Hillsborough, Lebanon, Mount Olive, Raritan, Readington, Roxbury, Tewksbury, Union, Washington, and West Amwell, the Town of Clinton, and the Boroughs of Califon, Glen Gardner, Hampton, and Mount Arlington.

The Shimmers Brook Basin Aquifer System underlies portions of Sussex County, NJ and Orange County, NY. The area includes parts of the Townships of Montague, Sandyston, Walpack, and Wantage, NJ, and the Township of Greenville and the City of Port Jervis, NY.

The Van Campens Brook Basin Aquifer System underlies portions of Warren and Sussex Counties. The area includes parts of the Township of Blairstown, Hardwick, Knowlton, Pahaquarry and Walpack.

The Wallkill River Basin Aquifer System underlies portions of Sussex County, NJ and Orange County, NY. The area includes all of the Village of Unionville, NY; and parts of the Townships of Andover, Byram, Hardyston, Jefferson, Lafayette, Montague, Sparta, Vernon, and Wantage, and the Boroughs of Franklin, Hamburg, Ogdensburg, and Sussex, NJ, and the Townships of Greenville, Minisink, Warwick, Wawayanda, Mount Hope, and Wallkill, NY.

The aquifer service areas for the Lopatcong Creek, Millstone River, Musconetcong River, North Branch Raritan River, Papakating Creek, Pequest River, Pohatcong Creek, South Branch Raritan River, Shimmers Brook, and the Wallkill River Basin Aquifer Systems extend beyond their aquifer system boundaries. Ground water from these basin aquifer systems is used by purveyors to supply people outside the aquifer system boundary. The population of all 15 aquifer service areas combined is approximately 600,000 people.

The recharge area for the 15 basin aquifer systems is the entire designated area. The streamflow source zone is defined as the upstream area of losing streams which flow into the recharge area. Except for the Millstone River, no streams flow into the recharge areas. In addition, all measurements indicate streams in the designated area are gaining streams. Therefore, there are no streamflow source zones for any of the 15 basin aquifer systems.

Only contaminants introduced in the recharge areas have the potential to affect the basin aquifer systems.

Therefore, the project review area is defined to include the entire designated area for the 15 basin aquifer systems.

Maps delineating the designated area and lists of the municipalities within each basin aquifer system are available, and may be obtained by contacting the person listed previously.

IV. Information Utilized in Determination

The information utilized in this determination included petition and background documentation submitted by the NJDEP, various U.S. Geological Survey and New Jersey State reports submitted with the petition, information contained in EPA files, and written and verbal comments from the public. These materials are available to the public and may be inspected during normal business hours at the address listed previously.

V. Project Review

Publication of this determination requires that EPA review proposed projects with Federal financial assistance in order to ensure that such projects do not have the potential to contaminate the 15 basin aquifer systems through their recharge zones so as to create a significant hazard to public health. In many cases, these projects may also be analyzed in an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(c). All EISs, as well as any other proposed Federal actions affecting an EPA program, are required by Federal law (under the so-called "NEPA/309" process) to be reviewed and commented upon by the EPA Administrator.

In order to streamline EPA review of the possible environmental impacts on a designated sole source aquifer, when an action is to be analyzed in an EIS, the two reviews will be consolidated and both authorities cited. The EPA review under §1424(e) will therefore be included in the EPA review of the EIS (under NEPA).

VI. Summary and Discussion of Public Comments

Most public comments received expressed strong support for the designation of the 16 basin aquifer systems for which NJDEP developed the necessary documentation. Of the eleven persons or groups who submitted comments on the petition, only the New York State Department of Environmental Conservation (NYSDEC) opposed designation. NYSDEC's comments were specific to the portions of the basin aquifer systems which extend into NY. The reasons given for opposition are that (1) the basin aquifer systems which extend into NY are not listed as Primary Water Supply Aquifers by the State, and that designating such areas as a SSA distorts the State priority system; and (2) ground water flow in the Wallkill River Basin Aquifer System is north, from NJ into NY, and that any activities within the Wallkill River Basin in NY will have no impact on ground water quality in NJ.

In response to the above, (1) the Federal SSA program, as administered by EPA, is based on criteria independent of any State ground water program; and (2) it is Agency policy to, whenever possible, designate SSAs based on hydrogeologic rather than political boundaries because contamination of any portion of an aquifer can affect the downgradient portions of that aquifer. All information reviewed indicates that the ground water divide in this area will correspond with the drainage basin divide. For this reason, the first prominent divide in the NY portion of the Wallkill River Drainage Basin was used to define the northern boundary of the Wallkill River Basin Aquifer System.

One person expressed concern that the Whippany River Basin Aquifer System portion of the petition area overlaps the peviously designated Buried Valley Sole Source Aquifer. Review of designation documentation by Agency personnel confirmed that an overlap exists between the two areas. Therefore, the area recommended for designation does not include the Whippany River Basin Aquifer System.

Another person expressed concern that SSA designation may impede local solid waste management efforts. However, SSA designation provides for review of ground water protection measures for only those projects which request Federal financial assistance. Since solid waste management at the local level is not federally funded, such efforts will not be subject to review under the SSA program.

Another commentor requested that EPA expand the proposed designated area for the Wallkill River Basin Aquifer System in Orange County, New York. Insufficient information was submitted with their request to justify an expansion. Therefore, rather than delay designation of an area with sufficient documentation, EPA will proceed with designation of the area as petitioned.

VII. Summary

Today's action affects the 15 basin aquifer systems of northwest NJ, located in Warren, Sussex, Passaic, Morris, Mercer, Hunterdon, Somerset and Middlesex Counties, NJ, and Orange County, NY. Projects with Federal financial assistance proposed for all of Warren County, NJ; and portions of Sussex, Passaic, Morris, Mercer, Hunterdon, Somerset and Middlesex Counties, NJ, and Orange County, NY, will be reviewed to ensure that necessary ground water protection measures are incorporated into them.

Dated: June 10, 1988.

Christopher J. Daggett,

Regional Administrator, Environmental Protection Agency, Region II.

[FR Doc. 88-14155 Filed 6-22-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Ebenezer Broadcasting Group, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, city and state	File No.	MM Docket No.
A. Ebenezer Broadcasting Group, Inc., Guayama, PR.	BPCT-870331QI	88-291
B. Ministerio Radial Cristo Viene, Inc., Guayama, PR.	BPET-87050KG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicants' name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Short-spacing, A, B
Contingent environmental, A, B
Comparative, A, B
Ultimate, A, B
(See appendix)

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M

Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau

Appendix

Ministerio Radial Cristo Viene, Inc.

1. To determine whether there is a greater need for noncommercial educational programming or for commercial programming in Guayama, Puerto Rico and the surrounding area to be served.

[FR Doc. 88–14212 Filed 6–22–88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Eclipse Broadcasting Group, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, city and State	File No.	MM Docket No.
A. Eclipse Broadcasting Group, Inc., Anchorage, AK.	BPCT–861231KJ	88–288
B. Echonet Corporation, Anchorage, AK.	BPCT–870331LA	
C. HCPA, Inc., Anchorage, AK.	BPCT–870331LF	
D. Alaska 33, Inc., Anchorage, AK.	BPCT–870407KF	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard, B; C
City Grade, D
Comparative, A, B, C, D
Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 88–14213 Filed 6–22–88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; FPS Broadcasting Group, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. FPS Broadcasting Group, Tyler, TX.	BPH–870428KB	88–280
B. Virginia Ann Hine, Tyler, TX.	BPH–870429MM	.....
C. Reynolds-Palmer Media of Texas, Inc., Tyler, TX.	BPH–870430NT	.....
D. Terri Lynn Dunn, Tyler, TX.	BPH–870430NU	.....
E. Rose City Radio, Inc., Tyler, TX.	BPH–870430NV	.....
F. Cardinal Communications, Inc., Tyler, TX.	BPH–870430NW	.....
G. H. Phillip Hook and Mary Michelle Chapin d/b/a Radio Partners of East Texas Ltd., a Texas Limited Partnership, Tyler, TX.	BPH–870430NX	.....
H. Eleanor Madeline Burkitt Jensen, Tyler, TX.	BPH–870430NY	.....
I. Rogers Venture Enterprises, Inc., Tyler, TX.	BPH–870430NZ	.....
J. Counsellor FM Limited Partnership, Tyler, TX.	BPH–870430OA	.....
K. Scottcom, Inc., Tyler, TX.	BPH–870430ON	.....

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1(a). (See Appendix), A
1(b). (See Appendix), A
1(c). (See Appendix), A
1(d). Misrepresentation, A
1(e). Qualifications, A
2. Air Hazard, A, B
3. Comparative, all
4. Ultimate, all

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

1(a). To determine the facts and circumstances surrounding the participation of Jeffrey Lynn Ward in the filing and prosecution of the application of "Jerry Swink" for a construction permit for a new FM station in Huntington, Texas (File No. BPH–870219MB; MM Docket No. 88–208).

1(b). To determine, in light of the evidence adduced pursuant to Issue 1(a) above, whether Jeffrey Lynn Ward misrepresented facts, lacked candor, and/or abused the Commission's processes in connection with the filing and prosecution of the application of "Jerry Swink" for a construction permit for a new FM Station in Huntington, Texas (File No. BPH–870219MB; MM Docket No. 88–208).

1(c). To determine, whether FPS Broadcasting Group ("C") violated 47 CFR 73.3514 by failing to disclose in response to Section II, Item 4(a) of FCC Form 301 (1982 ed.), the felony conviction of Jeffrey Lynn Ward.

[FR Doc. 88–14214 Filed 6–22–88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Fleming, LaQueth and Gloria, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. LaQueth Fleming and Gloria Fleming, Poughkeepsie, NY.	BPH–870327MI	88–279
B. David Rinehart, Poughkeepsie, NY.	BPH–870331MG	

Applicant, city and State	File No.	MM Docket No.
C. C & D Communications, Poughkeepsie, NY.	BPH-870331NY	
D. Poughkeepsie Broadcasting Limited, Poughkeepsie, NY.	BPH-870331OR	
E. Ocean Waves Broadcasting, Poughkeepsie, NY.	BPH-870331PA	
F. Harvest Broadcasting, Poughkeepsie, NY.	BPH-870331PP	
G. Wicrae Equities Limited, Poughkeepsie, NY.	BPH-870414KH	
H. Poughkeepsie Communications Limited Partnership, Poughkeepsie, NY.	BPH-870415KT	
I. HAL Communications, Poughkeepsie, NY.	BPH-870415KX	
J. The Kinney Group, Poughkeepsie, NY.	BPH-870415ME	
K. Farr Broadcasting, Inc., Poughkeepsie, NY.	BPH-870415MJ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Reporting, F
2. Air Hazard, E
3. Comparative, A–K
4. Ultimate, A–K

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Non-Standard Issue

1. (a) To determine the facts and circumstances surrounding F's failure to timely update its application and whether F violated 47 CFR 1.65.

(b) To determine, in light of the facts adduced pursuant to issue (a) above, whether F misrepresented facts to or concealed information from, or attempted to mislead the Commission.

(c) To determine, in light of the facts adduced pursuant to issues (a) and (b) above, whether F possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 88–14215 Filed 6–22–88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Hefty Communications, Ltd., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, city and State	File No.	MM Docket No.
A. Steven Heft d/b/a Hefty Communications, Ltd., Martinsburg, WV.	BPCT-870331QA	88-292
B. M&D Broadcasting, Ltd., Martinsburg, WV.	BPCT-870331QB	
C. Ralph D. Albertazzie, Martinsburg, WV.	BPCT-870602KK	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard, A, B, C
Comparative, A, B, C
Ultimate, A, B, C
See Appendix

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

Appendix

Non-Standard Issue(s)

Applicant(s)

Hefty Communications, Ltd.

1. To determine with respect to Hefty Communications, Ltd., whether its failure to disclose its interests in other pending broadcast applications as required by Section II, Item 6(b), FCC Form 301, was an attempt to conceal material facts from the Commission and, if so, the effect thereof on its basic qualifications to be a Commission licensee.

[FR Doc. 88–14216 Filed 6–22–88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Silent Minority Group, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, city and State	File No.	MM Docket No.
A. Silent Minority Group, Inc., Bryan, TX.	BPCT-870529KL	88-290
B. Central Texas Broadcasting Company, Bryan, TX.	BPCT-87063OKE	
C. Clear Channel Communications, Inc., Bryan, TX.	BPCT-870731KW	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Multiple Ownership, A,C
Satellite, B
Air Hazard, A, B
Comparative, A, B, C
Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 88–14217 Filed 6–22–88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Tiab Communications Corp., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, city and state	File No.	MM Docket No.
A. Tiab Communications Corporation, Tobyhanna, PA.	BPH–870615MJ	88–293
B. Resort Broadcasting System, Inc., Tobyhanna, PA.	BPH–870615MQ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponsding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–14218 Filed 6–22–88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[Docket No. 88–479]

Qualified Thrift Lender Test

Date: June 16, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted a new information collection request, "Qualified Thrift Lender Test" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The information provided by this report will be usd by the Bank Board to determine whether a thrift complies with the comprehensive Equality Banking Act. The Bank Board estimates that each report will require 4 hours to complete.

DATES: Comments on the information collection request are welcome and should be received on or before July 8, 1988.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, Phone: (202) 653–2751.

FOR FURTHER INFORMATION CONTACT: Parker Jayne, Office of Regulatory Policy, Oversight and Supervision 202–778–2559 Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–14145 Filed 6–22–88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–006400–026.

Title: Inter-American Freight Conference Pacific Coast Area.

Parties:

Companhia De Navegacao Lloyd Brasileiro
Empresa Lineas Maritimas Argentinas Sociedad Anonima (Elma S/A)
Nedlloyd Lijnen B.V.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Docket No. 86–16, service contract provisions.

Agreement No.: 202–009648–A–045.

Title: Inter-American Freight Conference.

Parties:

A. Bottacchi S.A. De Navegacion C.F.I.e I.
American Transport Lines, Inc.
A/S Ivarans Rederi
Companhia Maritima Nacional
Companhia De Navegacao Lloyd Brasileiro
Companhia De Navegacao Maritime

Netumar
Empresa Lineas Maritimas Argentinas Sociedad Anonima (Elma S/A)
Empresa De Navegacao Allianca S.A.
Frota Amazonica S.A.
Columbus Line
Van Nievelt Goudriaan & Co. B.V.
Reefer Express Lines PTY. Ltd.
Sea-Land Service, Inc.
Transportacion Maritima Mexicana S.A.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Docket No. 86–16, service contract provisions.

Agreement No.: 232–011199.
Title: V.A.G. Transport/Kommar Reciprocal Space Charter and Sailing Agreement.
Parties:

V.A.G. Transport GmbH
Kommar Companhia Maritima S.A.

Synopsis: The proposed amendment would authorize the parties to charter space from one another and to rationalize sailings in the trade from ports in Brazil to ports on the U.S. Atlantic and Gulf coasts. It would also permit them to agree upon the number, size and type of vessels to be operated by each party.

Agreement No.: 206–011200.
Title: Mediterranean Interconference Agreement.
Parties:

South Europe/U.S.A. Freight Conference U.S. Atlantic & Gulf/Western Mediterranean Rate Agreement

Synopsis: The proposed amendment would authorize the parties to agree upon rates, service contract terms, conditions of service and other matters in the trade between western Mediterranean ports and points in continental Europe and U.S. Atlantic and Gulf ports and U.S. coastal or interior points via such ports.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Date: June 17, 1987.

[FR Doc. 88–14113 Filed 6–22–88; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

A. Andrew Boemi; Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 8, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *A. Andrew Boemi,* Flora D. Boemi, Andrew A. Boemi, Pamela L. Boemi, Edwin Cee Buchanan and Marcia Buchanan; to acquire 13.95 percent of the voting shares of Madison Financial Corporation, Chicago, Illinois, and thereby indirectly acquire Madison Bank and Trust Company, Chicago, Illinois; Madison National Bank of Niles, Des Plaines, Illinois; and 1st National Bank of Wheeling, Wheeling, Illinois.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Samuel L. Kaplan,* Minneapolis, Minnesota, to acquire 37.5 percent; Ralph Strangis, Minneapolis, Minnesota, to acquire 37.5 percent; and Judith Brown Blanchard, Mendota Heights, Minnesota, to acquire 25 percent of the voting shares of Nerstrand Bancshares, Inc., Nerstrand, Minnesota, and thereby indirectly acquire Farmers State Bank, Nerstrand, Minnesota.

Board of Governors of the Federal Reserve System, June 17, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88–14114 Filed 6–22–88; 8:45 am]
BILLING CODE 6210–01–M

Delaware Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their view in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 14, 1988.

A. **Federal Reseve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Delaware Bancshares, Inc.,* Walton, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Delaware County, Walton, Walton, New York.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Executive Bancorp., Inc.,* Philadelphia Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of First Executive Bank, in organization, Philadelphia, Pennsylvania, a *de novo* bank.

2. *First Fidelity Bancorporation,* Newark, New Jersey, and Philadelphia, Pennsylvania; to acquire 24.9 percent of the voting shares of First Executive Bancorp, Inc., Philadelphia, Pennsylvania, and thereby indirectly acquire First Executive Bank, Philadelphia, Pennsylvania.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northwest Illinois Bancorp, Inc.,* Freeport, Illinois; to acquire 100 percent of the voting shares of First State Financial Corporation of Rockford, Rockford, Illinois, and thereby indirectly acquire First State Bank and Trust Company, Rockford, Illinois. Comments in this application must be received by July 8, 1988.

2. *NWIB Acquisition Corporation, Inc.,* Freeport, Illinois; to become a bank holding company by acquiring 100

percent of the voting shares of First State Bank and Trust Company, Rockford, Illinois. Comments on this application must be received by July 8, 1988.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Weakley County Bancshares, Inc.*, Dresden, Tennessee; to acquire at least 91.39 percent of the voting shares of Dukedom Bank, Dukedom, Tennessee.

Board of Governors of the Federal Reserve System, June 17, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-14115 Filed 6-22-88; 8:45 am]

BILLING CODE 6210-01-M

Huntington Bancshares Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 15, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Huntington Bancshares Incorporated*, Columbus, Ohio; to engage *de novo* through its subsidiary, The Huntington Acceptance Company, Columbus, Ohio, in making and servicing loans pursuant to § 225.25(b)(1); and leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp*, Los Angeles, California; to engage *de novo* through its subsidiary, Nova Financial Service, Inc., Honolulu, Hawaii, as an industrial loan company pursuant to § 225.25(b)(2) and engage in the sale of credit-related insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 17, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-14116 Filed 6-22-88; 8:45 am]

BILLING CODE 6210-01-M

Prairieland Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decrease or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 14, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Prairieland Bancorp, Inc.*, Bushnell, Illinois; to acquire Prairieland Accounting and Tax Services, Bushnell, Illinois, and thereby engage in tax planning and preparation pursuant to § 225.25(b)(21) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 17, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-14117 Filed 6-22-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88P-0170]

Canned Pineapple Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to the Del Monte Corp. to market test a style of pack of canned pineapple, designated as "whole," that is not provided for by the U.S. standard of identity for canned pineapple (21 CFR 145.180(a)). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATE: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced

into interstate commerce, but not later than September 21, 1988.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson. Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0109.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to the Del Monte Corp., P.O. Box 9004, Walnut Creek, CA 94598.

The permit covers limited interstate marketing tests of canned, peeled, and cored whole pineapple packed in pineapple juice. The test product deviates from the U.S. standard of indentity for canned pineapple in § 145.180(a) in that the style of pack is whole pineapple, a style not provided for by the standard. The product meets all requirements of the standard with the exception of this deviation. The permit provides for the temporary marketing of 150,000 cases, each containing 24 20-ounce cans. The test product will be distributed in Louisville, KY, Omaha, NE (includes Des Moines, IA), Memphis (includes Little Rock, AR and Jackson, MO) and Nashville, TN, Birmingham, Montgomery, and Mobile, AL, New Orleans, LA, and Phoenix, AZ.

The test product is to be packed in Del Monte Corp.'s cannery in Bugo, Mindanao Island, in the Republic of the Philippines.

Each of the ingredients used in the food is stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than September 21, 1988.

Dated: June 16, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–14192 Filed 6–22–88; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Library of Medicine; Meeting of the Literature Selection Technical Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on July 26–27, 1988, convening each day at 9:00 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on July 26 will be open to the public from 9:00 a.m. to 12:00 noon for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(9)(B), Title 5, U.S.C., Pub. L. 92–463, the meeting will be closed on July 26 from approximately 12:00 noon to 5:00 p.m. and on July 27 from 9:00 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members. Mrs. Lois Ann Colaianni, Executive Secretary of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: June 16, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–14239 Filed 6–22–88; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following study sections for July 1988, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendence by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time, and location. All times are A.M. unless otherwise specified.

Study section	July 1988 meetings	Time	Location
Behavioral and Neurosciences—1; Dr. Samuel Rawlings, Rm. A13, Tel. 301–496–5352	July 27–28	8:30	Holiday Inn, Chevy Chase, MD.
Behavioral and Neurosciences—2; Dr. Samuel Rawlings, Rm. A13, Tel. 301–496–5352	July 21	8:30	Holiday Inn, Chevy Chase, MD.
Biomedical Sciences—3; Mr. Gene Headley, Rm. A25, Tel. 301–496–7287	July 18–19	8:30	National Clarion Hotel, Crystal City, VA.
Biomedical Sciences—4; Dr. Charles Baker, Rm. A10, Tel. 301–496–7150	July 18–20	8:30	Crowne Plaza, Rockville, MD.
Biomedical Sciences—5; Dr. Bert Wilson, Rm. A25, Tel. 301–496–7600	July 11–12	8:30	St. James Hotel, Washington, DC.
Biomedical Sciences—6; Dr. Syed M. Amir, Rm. A10, Tel. 301–496–3117	July 18–20	8:30	Holiday Inn, Georgetown, DC.
Biomedical Sciences—7; Dr. Daniel Eskinazi, Rm. A10, Tel. 301–496–1067	July 25–27	8:30	Holiday Inn, Georgetown, DC.
Clinical Sciences—1; Dr. Lynwood Jones, Jr., Rm. A19, Tel. 301–496–7510	July 28–29	8:30	Crowne Plaza, Rockville, MD.
Clinical Sciences—2; Dr. Nathan Watzman, Rm. 340, Tel. 301–496–7248	July 18–19	8:30	Crowne Plaza, Rockville, MD.
Clinical Sciences—3; Dr. Nicholas Mazarella, Rm. A27, Tel. 301–496–1069	July 22	8:00	Crowne Plaza, Rockville, MD.
Clinical Sciences—4; Dr. Nathan Watzman, Rm. 340, Tel. 301–496–7248	July 29	8:30	Room 7, Bldg. 31C, Bethesda, MD.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: June 16, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–14240 Filed 6–22–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Alcohol, Drug Abuse and Mental Health Administration; Emergency Substance Abuse Treatment and Prevention Rehabilitation; Delegation of Authority

Notice is hereby given that in furtherance of the delegation by the Secretary of Health and Human Services on November 23, 1981, to the Assistant Secretary for Health, the Assistant Secretary for Health has delegated to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, with authority to redelegate, all the authority delegated to the Assistant Secretary for Health under Part C of Title XIX of the Public Health Service Act, as amended.

The delegation to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration became effective on:

Date: June 9, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88–14118 Filed 6–22–88; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination Against Federal Acknowledgment of the Machis Lower Alabama Creek Indian Tribe, Inc.

June 13, 1988.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(h), notice is hereby given that the Assistant Secretary declines to acknowledge that the Machis Lower Alabama Creek Indian Tribe, Inc., c/o Mrs. Pennie Wright, 708 S. John Street, New Brockton, Alabama 36351 exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination, following a review of public comments on the proposed findings, that the group does not meet four of the mandatory criteria set forth in 25 CFR 83.7 and, therefore, does not meet the requirements necessary for a government-to-government relationship with the United States.

Notice of the proposed findings to decline to acknowledge the Machis Lower Alabama Creek Indian Tribe was published on page 34319 of the **Federal Register** on September 10, 1987. The proposed findings were based on a determination that the petitioner met criteria d, f, and g, but did not meet criteria a, b, c, and e of Part 83.7 of the Acknowledgment regulations (25 CFR, Part 83). In accordance with 25 CFR 83.9(g), interested parties were given 120 days in which to submit factual or legal arguments and evidence to rebut or support the evidence relied upon in the findings. Pursuant to a request by the petitioner, the Assistant Secretary—Indian Affairs, by a letter dated December 17, 1987, extended the comment period an additional 90 days.

During the comment period, a rebuttal containing evidence and arguments challenging the proposed findings was submitted by the petitioner. One other comment was received during this period which agreed with the conclusions reached in the Genealogical Report of the proposed findings that certain ancestral families did not possess Indian ancestry, but did not include any new evidence.

The arguments and evidence submitted by the petitioner in response to the proposed findings did not specifically address the criteria or the conclusions made in the summary under the criteria or in the technical reports. Although the petitioner continues to claim that their ancestors came from the Creek town of Tamali, and, in the rebuttal, made new claims of other ancestral Creek towns, no evidence was submitted to substantiate their claim. No discussion of any historic community or their contemporary community was included in the practitioner's rebuttal. The petitioner asserts that the Dawes Severalty Act of 1887 (24 Stat. 388) took away political authority over the members of the group. The Dawes Act was to provide for the allotment of tribal lands to individual tribal members on the various reservations. The law contained no specific provision affecting the powers of tribal authority. Since there is no other evidence that the petitioner was identified as an Indian entity prior to 1982, the Dawes Act did not apply to the group. The evidence that the petitioner submitted in its rebuttal pertaining to the group's ancestors did not identify the ancestors as Indian or members of any tribal entity.

The petitioner's response is critical of the fact that the Bureau contracted with Professor J. Anthony Paredes, an anthropologist at Florida State University, to conduct a preliminary ethnohistorical and ethnographic report on the petitioner. Dr. Paredes did not write the proposed findings. He was contracted to provide background infomration on the petitioner within the general context of the ethnohistory and ethnography of Creek Indians in Alabama. His report, which was based on both archival research and interviews with group members and others, presented his findings in an objective manner. Dr. Paredes did not conduct any detailed geographical research. His report did not draw any conclusions regarding whether or not the petitioner met the mandatory criteria for acknowledgment. The recommendations contained in the proposed findings not to acknowledge the petitioner, and the factual conclusions on which they are based, were written, solely and entirely, by the Acknowledgment research team which evaluated the petition for acknowledgment. The Acknowledgment research team utilized the Paredes report to a considerable extent, but also conducted its own research in order to expand, supplement, and/or refute information presented in both the petition and the Paredes report.

The petitioner's response does point out some minor errors in the technical reports. The errors have been noted in a report summarizing the Department's response to the evidence and arguments submitted to refute the proposed findings. This report is available to the petitioner and interested parties upn written request. Requests for copies of the report or the proposed findings should be addressed to the Assistant Secretary—Indian Affairs, Department of the Interior, 18th and C Streets NW., Washington, DC 20242, Attention:

Branch of Acknowledgment and Research, Mail Stop 1352–MIB.

In accordance with § 83.9(j) of the acknowledgment regulations, an analysis was made to determine what, if any, options other than acknowledgment are available under which the Machis Lower Alabama Creek Indian Tribe, Inc., could obtain services and other benefits. No viable alternative could be found due to the group's unsubstantiated Indian ancestry and the group's lack of inherent social and political cohesion and continuity as an Indian entity. This conclusion is based on independent research conducted by the Acknowledgment staff and on factual arguments and evidence presented in the group's petition and in the rebuttal which challenged the proposed findings. This determination is final and will become effective 60 days after publication unless the Secretary of the Interior requests the determination be reconsidered pursuant to 25 CFR 83.10(a–c).

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88–14222 Filed 6–22–88; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[MT–070–08–4050–91]

Montana; Notice to Begin Wilderness Study for Sleeping Giant and Sheep Creek Wilderness Study Areas

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice to begin Wilderness Study for Sleeping Giant and Sheep Creek Wilderness Study Areas.

SUMMARY: The Montana Bureau of Land Management has completed the intensive wilderness inventories for all qualifying land within the Sleeping Giant area. The final decision announced in the March 3, 1988, Federal Register by the Butte District Office ended June 12, 1988. No appeals were filed. This decision identifies the entire Jackson Peak Add-on (375 acres) and a portion of the Sheep Creek Unit (3,967 acres) as Wilderness Study Areas.

The Jackson Peak Add-on is contiguous with the Sleeping Giant WSA which was established in 1981. The two areas will be consolidated and studied as the Sleeping Giant WSA (6,487 acres) under section 603 of FLPMA.

The Sheep Creek WSA is located just west of the Sleeping Giant WSA and is separated by a powerline and maintenance road. This area (3,967 acres) qualified as a WSA due to strong public support. The study will be conducted under the authority of section 202 of FLPMA.

These two WSAs are located southwest of Holter Lake some 25 miles north of Helena in Western Montana.

The Sleeping Giant and Sheep Creek WSAs will be studied independently and documented under one Environmental Impact Statement. Analysis will be done in accordance with the guidance Memorandum of September 17, 1985, issued by the BLM director and the provisions of the BLM's "Wilderness Study Policy; Policies, Criteria, and Guidelines for Conducting Wilderness Studies on Public Lands," dated February 3, 1982. The draft EIS is scheduled to be available for public review and comment in August, 1989.

FOR FURTHER INFORMATION CONTACT: District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

J.A. Moorhouse,

District Manager.

June 15, 1988.

[FR Doc. 88–14230 Filed 6–22–88; 8:45 am]

BILLING CODE 4310–DN–M

[WY–060–08–4121–02]

Wyoming; Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Casper District Advisory Council Meeting.

SUMMARY: The Casper District Advisory Council will meet at 8:00 a.m. m.t. on Tuesday, July 26, 1988 in the conference room of the Casper District Office, 1701 East "E" Street, Casper, Wyoming. Public comment period is scheduled for 3:00 p.m. m.t.

The meeting begins with a half-day tour of recreational and historical sites located within the boundaries of the Platte River Resource area. Other agenda items listed for discussion include: Handicap access; Department of the Interior's Take Pride In America Campaign, cooperative agreements, fire management, BLM's recreational policy, and an update on the beetle infestation on Muddy Mountain plus any other topics recommended by council members or the public.

The meeting is open to the public. Persons who desire to address the council are asked to contact Kate DuPont at (307) 261–5101 in advance of the meeting.

Date: June 15, 1988.

James W. Monroe,

District Manager.

[FR Doc. 88–14223 Filed 6–22–88; 8:45 am]

BILLING CODE 4310–22–M

[AZ–020–08–4212–13; A–23360]

Public Land Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—exchange, public land, Mohave County, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

T. 19 N., R. 21 W.,
Sec. 29, S½N½, S½;
Sec. 30, S½NE¼, SE¼.
Containing 720.00 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from Walter E. Biewer of Prescott, Arizona, or his assigns:

Gila and Salt River Meridian

T. 14 N., R. 12 W.,
Sec. 7, lots 1–4, E½W½.
T. 14 N., R. 13 W.,
Sec. 1, lots 3 and 4, S½NW¼, SW¼.
T. 15 N., R. 12 W.,
Sec. 19, lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 29, all;
Sec. 33, all, except north 42 feet east of highway.
T. 15 N., R. 13 W.,
Sec. 25, all.
T. 16 N., R. 14 W.,
Sec. 27, N½, SW¼.
T. 16½ N., R. 19 W.,
Sec. 25, all, except north and west 50 feet and Santa Fe Pacific Railroad Company right of way.
T. 18 N., R. 18 W.,
Sec. 11, all.
T. 23 N., R. 13 W.,
Sec. 9, E½.
T. 23 N., R. 17 W.,
Sec. 5, lot 3, SW¼NE¼, S½NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 7, NE¼NE¼;
Sec. 8, S½SE¼NE¼ (portion), NW¼SE¼;
Sec. 29, SE¼NE¼.
Containing 5,767.47 acres, more or less.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States: (a) Right-of-way for ditches and canals pursuant to the Act of August 30, 1890.

2. Subject to: (a) Reservation of all minerals to the Santa Fe Pacific Railroad Company (section 29 only); and (b) restrictions that may be imposed by the Mohave County Board of Supervisors in accordance with county floodplain regulations established under Resolution No. 84–10 adopted on December 3, 1984, as amended.

Private lands to be acquired by the United States will be subject to the following reservations:

1. All minerals to the Santa Fe Pacific Railroad Company together with the right to prospect for, mine, and remove same.
2. Easement for electric transmission line.
3. Easement for gas pipeline.
4. Easement for State Highway 93.

The purpose of the exchange is to consolidate federal land to facilitate resource mangement in range, wildlife and recreation and to dispose of land with speculative development potential.

Publication of this Notice will segregate the subject lands from operation of the public land laws. This segregation will terminate upon the issuance of a deed or patent or two years from the date of publication of this notice in the **Federal Register** or upon publication of a Notice of Termination.

Detailed information concerning this exchange may be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: June 17, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88–14224 Filed 6–22–88; 8:45 am]

BILLING CODE 4310-32-M

[ID–060–08–4212–14; I–25488 B et al]

Coeur d'Alene District, ID; Noncompetitive Sale of Public Lands

Correction

In notice document 88–11819 beginning on page 19051 in the issue of Thursday, May 26, 1988, make the following correction:

Under the second column labeled "Legal description," the third line "T. 58 N.," should read "T. 48 N.,."

Date: June 13, 1988.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 88–14225 Filed 6–22–88; 8:45 am]

BILLING CODE 4310-66-M

[MT–070–08–4050–91; MTM–74131]

Montana; Realty Action: Exchange

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands in Missoula, Granite, Powell, and Lewis and Clark Counties, Montana.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Principal Meridian, Montana

T. 14 N., R. 12 W., Sec. 18, Lots 1, 3, 4, SW¼ NE¼, SE¼SW¼, S½SE¼, NE¼SE¼
T. 14 N., R. 13 W., Sec. 14, E½NE¼, E½ SW¼, SE¼
T. 13 N., R. 14 W., Sec. 2, Lot 1, SE¼NE¼
T. 11 N., R. 15 W., Sec. 18, Lot 4
T. 12 N., R. 15 W., Sec. 26, NE¼, N½NW¼, NE¼SE¼
T. 12 N., R. 16 W., Sec. 14, S½NE¼, E½SE¼
T. 12 N., R. 16 W., Sec. 3, Lots 13, 14, NE¼ SE¼
T. 12 N., R. 16 W., Sec. 4, Lot 12, SW¼, W½ SE¼

Containing 1,562.79 acres of public land.

In exchange for these lands, the United States will acquire the following lands owned by Champion International

Principal Meridian, Montana

T. 14 N., R. 9 W., Sec. 19, Lot 4, SE¼SW¼, S½SE¼
T. 14 N., R. 9 W., Sec. 29, NW¼
T. 11 N., R. 10 W., Sec. 21, NW¼SW¼, S½ S½
T. 11 N., R. 10 W., Sec. 23, W½
T. 11 N., R. 10 W., Sec. 27, All
T. 14 N., R. 10 W., Sec. 29, N½

Containing 1,800.17 acres.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment/land report, is available for review at the Garnet Resource Area Office, 3255 Fort Missoula Road, Missoula, Montana 59801.

SUPPLEMENTARY INFORMATION: The terms, conditions, and reservations of the exchange are:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.
2. The surface estate will be exchanged on an equal value basis.
3. The lands will be exchanged subject to all valid, existing rights (e.g., rights-of-way, easements, and leases of record).
4. The exchange must meet the requirements of 43 CFR 4110. This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The estimated completion date is September 1988. The public interest will be served by this exchange through repositioning of scattered public lands into intensively managed retention areas and by acquisition of riverfront tracts with high public values.

James A. Moorhouse,

District Manager.

June 15, 1988.

[FR Doc. 88–14226 Filed 6–22–88; 8:45 am]

BILLING CODE 4310-DN-M

[NDM76245; (MT–030–06–4212–13)]

Realty Action—Exchange; North Dakota

AGENCY: Bureau of Land Management, Dickinson District, Interior.

ACTION: Notice of Realty Action NDM76245, Exchange of public land in Bowman, Dunn, Grant, and McHenry Counties, North Dakota for private land in Bowman County, North Dakota.

SUMMARY: The following described lands have been determined suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Fifth Principal Meridian, North Dakota

T. 152 N., R. 75 W.,
Sec. 2, Lot 2.
T. 153 N., R. 76 W.,
Sec. 2, E½SW¼.
T. 154 N., R. 76 W.,
Sec. 35, NE¼NE¼.
T. 131 N., R. 86 W.,
Sec. 22, E½SW¼, SE¼.
T. 147 N., R. 97 W.,
Sec. 8, SE¼SW¼;
Sec. 18, Lots 1, 2, 4, E½E½, NE¼NW¼;
Sec. 30, Lots 1, 2;
Sec. 32, NE¼NW¼, NE¼SE¼.
T. 129 N., R. 105 W.,

Sec. 35, S½SE¼.

Containing/aggregating 1001.76 acres of public land.

Note.—If any of the public land listed above is dropped from the exchange for any reason, substitution will be made from the following list containing/aggregating 664.70 acres:

Fifth Principal Meridian, North Dakota

T. 151 N., R. 52 W.,
Sec. 13, SE¼SW¼.
T. 149 N., R. 63 W.,
Sec. 27, Lot 1.
T. 150 N., R. 63 W.,
Sec. 14, Lot 1;
Sec. 19, Lot 1;
Sec. 26, NE¼SW¼.
T. 151 N., R. 67 W.,
Sec. 13, Lot 2.
T. 144 N., R. 71 W.,
Sec. 28, Lot 3.
T. 157 N., R. 72 W.,
Sec. 18, NW¼NE¼.
T. 135 N., R. 77 W.,
Sec. 30, NE¼NE¼.
T. 154 N., R. 77 W.,
Sec. 3, Lot 1, SE¼NE¼.
T. 134 N., R. 86 W.,
Sec. 4, S½SW¼.
T. 156 N., R. 89 W.,
Sec. 27, NW¼NE¼.
T. 149 N., R. 95 W.,
Sec. 1, Lot 1;
Sec. 10, SE¼SE¼.
T. 150 N., R. 95 W.,
Sec. 24, Lot 4;
Sec. 25, Lot 1.
T. 152 N., R. 100 W.,
Sec. 24, SE¼NW¼, SW¼SW¼;
Sec. 25, W½NW¼;
Sec. 26, NE¼NW¼.
T. 151 N., R. 104 W.,
Sec. 26, Lot. 1

In exchange for this land, the United States will acquire the following described land from Mr. and Mrs. Kelly Stearns.

Fifth Pricipal Meridian, North Dakota

T. 129 N., R. 106 W.,
Sec. 21, Lots 2, 3, 4, 5, 6, SW¼NE¼, E½NW¼, NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 22, Lots 4, 5;
Sec. 27, Lot 2;
Sec. 28, Lot 1.

Containing/aggregating 587.55 acres of private land.

DATES: From August 8, 1988, interested parties may submit comments to the Bureau of Land Management, at the address given below. Any adverse comments will be evaluated by the Bureau of Land Management, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FURTHER INFORMATION: Information related to this exchange, including the environmental assessment and land report, is available for review at the Bureau of Land Management, Dickinson District Office, 202 East Villard, Box 1229, Dickinson, ND 58602.

Comment dates: For a perof of 45 days from date of publication in the Federal Register, interested parties may submit comments to the Bureau of Land Management at the address given above.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public land described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976 for a period of two (2) years from the date of publication of this notice in the Federal Register. The segregative effect will terminate upon issuance of patents for the subject public land or two (2) years from the date of this publication, whichever occurs first.

Transfer of the public land in the exchange is subject to the following:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.
2. The reservation to the United States of all minerals.
3. All valid existing rights (e.g., rights-of-way and leases of record).
4. Value equalized by cash payments or acreage adjustments.
5. The exchange must meet the requirements of 43 CFR 4110.4-2(b).

This exchange is consistent with Bureau of Land Management policies and land use planning. The estimated intended time of the exchange is September 1988. The public interest will be served by completion of this exchange because it will enable the Bureau of Land Management to acquire land with high public values, and will increase management efficiency of public land in the area.

Date: June 16, 1988.

William F. Krech,

District Manager.

[FR Doc. 88-14227 Filed 6-22-88; 8:45 am]

BILLING CODE 4310-DN-M

[CA-010-08-4333-02]

Recreation Use Fee for South Yuba Campground

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to Title 36 CFR, a user fee of $3.00 (three dollars) per campsite per night will be charged at the South Yuba Campground, within the South Yuba Recreation Area, California.

SUPPLEMENTARY INFORMATION: The South Yuba Campground meets the standards required for the collection of user fees. Fees for other campgrounds with similar facilities were determined to be three dollars per night.

Authority for user fees is contained in Title 36 CFR, Part 71.

DATE: The user fee becomes effective June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Deane K. Swickard, Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630. Telephone (916) 985-4474.

Date: June 14, 1988.

D.K. Swickard,

Area Manager.

[FR Doc. 88-14228 Filed 6-22-88; 8:45 am]

BILLING CODE 4310-40-M

[OR-020-08-4212-08; GP8-147]

Public Land Exchange, Management Framework Plan Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Actions—Exchange of Public Lands in Harney County, Oregon; Notice of Availability of Proposed Decision on Andrews/Drewsey Land Tenure Management Framework Plan Amemdment (MFPA).

SUMMARY: The Bureau of Land Management (BLM) in the State of Oregon, Burns District, intends to amend the Andrews and Drewsey Management Framework Plans (MFPs) in accordance with 43 CFR 1610.5-5. The amendments pertain solely to the Lands portions of the planning documents. The BLM has prepared a Proposed Decision which places the affected public lands into various zones of retention or disposal. The planning amendments are necessary because the existing MFPs do not adequately identify these lands for land tenure adjustments.

Additionally, this notice serves as the Notice of Realty Action as required by 43 CFR, Part 2201. The Burns District has received two separate exchange proposals affecting 3,839.93 acres of public land.

One proposal affects 520.00 acres of public land and is described as follows:

Willamette Meridian, Oregon

T. 40 S., R. 36 E.,
Sec. 19: SW¼SE¼;
Sec. 30: E½, E½W½.

Comprising 520.00 acres more or less.

Contingent upon approval of the amended MFP, the above-described 520.00 acres will be in conformance with the land use plan and therefore suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (FLPMA). In exchange for these lands, the Federal Government will acquire the following land from Marvin Casey:

Willamette Meridian, Oregon

T. 42 S., R. 36 E.,
Sec. 13: E½SE¼;
Sec. 24: Lots 1, 2, NE¼.
T. 41 S., R. 37 E.,
Sec. 18: Lot 4;
Sec. 19: Lots 1, 2, 3.
Comprising of 436.50 acres more or less.

The purpose of this exchange is to acquire valuable wildlife and recreation lands in the Trout Creek Mountains. The public interest will be well served by making this exchange.

The other exchange proposal affects 3,319.93 acres of public land and is described as follows:

T. 30 S., R. 31 E.,
Sec. 23: W½NE¼, SE¼NE¼, NW¼, E½ SW¼, SE¼;
Sec. 24: SW¼NW¼, N½SW¼, SE¼;
Sec. 25: SW¼, SW¼SE¼, W½SE¼SE¼;
Sec. 26: NE¼, E½NW¼, E½SW¼, SE¼;
Sec. 35: NE¼NE¼;
Sec. 36: E½, NW¼, E½SW¼, N½NW¼ SW¼.
T. 30 S., R. 32 E.,
Sec. 19: Lot 4, SE¼SW¼;
Sec. 28: S½SW¼, SW¼SE¼;
Sec. 29: NW¼SW¼, S½SE¼;
Sec. 30: NW¼NE¼, S½NE¼, NE¼NW¼, NE¼SE¼;
Sec. 32: E½NE¼, NW¼NE¼;
Sec. 33: W½NE¼, NW¼, N½SW¼, NW¼ SE¼.
T. 32 S., R. 32½ E.,
Sec. 16: NE¼NE¼, S½NE¼, N½SE¼.
Comprising of 3,319.93 (−) acres.

In exchange for these lands, the Federal Government will acquire the following-described private lands from Hammond Ranches, Inc.:

T. 31 S., R. 32¾ E.,
Sec. 10: NE¼NE¼, NE¼SE¼, S½SE¼;
Sec. 11: SW¼NE¼, NW¼NW¼, S½NW¼, SW¼, SE¼;
Sec. 12: NW¼SW¼, S½SW¼;
Sec. 14: NW¼, N½SW¼;
Sec. 15: NE¼, NE¼SE¼;
Sec. 21: SW¼NE¼, NE¼SE¼.
T. 32 S., R. 32¾ E.,
Sec. 18: SE¼SW¼.
Comprising of 1,320.00 (±) acres.

The Federal Government would acquire important wildlife habitat and greatly enhance the landownership pattern in the area by making this exchange.

The value of the lands to be exchanged is approximately equal and the acreage will be adjusted to equalize values upon completion of the land appraisal.

The exchanges will be subject to:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1980 (43 U.S.C. 945).

2. Oil and gas rights may be reserved in the final patent. Any existing oil and gas leases will remain in effect until expiration

3. Mineral rights may be reserved dependent upon the findings in the mineral report.

4. All other valid existing rights, including but not limited to any right-of-way, easement or lease of record.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

Detailed information concerning the proposed exchanges and land use plan amendments including the environmental analysis, will be available for review at the Burns District Office, HC74–12533 Hwy 20 W., Hines Oregon 97738.

Comments

For a period of 45 days from the date of this publication in the **Federal Register**, interested parties may submit comments to the Burns District Manager at the above address.

Any adverse comments received as a result of the Notice of Realty Action on the Casey Land Exchange will be evaluated by the District Manager who may vacate or modify the realty action and issue a final determination. In the absence of any action by the District Manager, this realty action may become a final determination of the Department of the Interior.

The Land Tenure Plan Amendments have undergone an intense public participation process and the proposed decision has been mailed to known interested parties. The proposed decision allows for a 45 day comment period. the proposed decision includes the BLM's intent to consummate the Hammond Exchange which has formerly undergone the Environmental Assessment and Land Report requirements.

Persons interested in receiving more information or commenting on either the Hammond Exchange or the Land Tenure Plan Amendments may do so by writing the District Manager at the above address. The plan amendments and associated Environmental Assessment are available for inspection at the Burns District Office during normal working hours.

Dated: June 14, 1988.

Joshua L. Warburton,

Burns District Manager.

[FR Doc. 88–14136 Filed 6–22–88; 8:45 am]

BILLING CODE 4310-33-M

[CA-940-08-4220-10; CA 19966]

Termination of Proposed Withdrawal and Opening of Land; California

June 14, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal of 25 acres of land requested by the Forest Service, U.S. Department of Agriculture. This action will open 25 acres of land to mining location. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, (916) 978–4815.

SUPPLEMENTARY INFORMATION: On May 14, 1987, a notice of proposed withdrawal and reservation of land for the Forest Service, U.S. Department of Agriculture, was published in the **Federal Register** at 52 FR 18289. The purpose of the application was to protect a developed recreation site, the Sims Campground. The land is no longer needed for this purpose.

1. The segregative effect is hereby terminated as to the following described land:

Mount Diablo Meridian Shasta-Trinity National Forest

T. 37 N., R. 4 W.,
Sec. 17, S½SE¼SE¼NW¼4SW¼, N½NE¼NE¼SW¼SW¼, S½N½ NE¼SW¼SW¼, S½N½SW¼SW¼, and N½S½SW¼SW¼.

The area described contains 25 acres in Siskiyou County.

2. At 10 a.m. on July 25, 1988, the lands shall be opened to such forms of disposition as may by law be made of Nattional Forest System lands, including location and entry under the United States mining laws. Appropriation of lands described in this order under the

general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication & Records.

[FR Doc. 88-14137 Filed 6-22-88; 8:45 am]

BILLING CODE 4310-40-M

[CO-942-08-4520-12]

Colorado; Filing of Plats of Survey

June 13, 1988.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., June 13, 1988.

The plat representing the corrective dependent resurvey of a portion of the west boundary and subdivisional lines, T. 37 N., R. 11 E., New Mexico Principal Meridian, Colorado, Group No. 716, was accepted May 23, 1988.

The plat representing the dependent resurvey of the north boundary, a portion of the east boundary and subdivisional lines, and the survey of the subdivision of certain sections, T. 18 S., R. 71 W., Sixth Principal Meridian, Colorado, Group No. 798, was accepted May 31, 1988.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of a portion of the east boundary and subdivisional lines, and the survey of the subdivision of section 13, T. 42 N., R. 10 W., New Mexico Principal Meridian, Colorado, Group No. 865, was accepted May 18, 1988.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 88-14229 Filed 6-22-88; 8:45 am]

BILLING CODE 4310-JB-M

[CO-940-08-4220-11; C-28306]

Proposed Modification and Continuation of Withdrawal; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for the Yeoman Park Administrative Site be modified and the withdrawal be continued for 20 years insofar is it affects 80 acres of National Forest System land. The land will continue to be closed to the mining laws, but not to mineral leasing.

DATE: Comments should be received within 90 days of publication date.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236-1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Secretarial Order dated December 11, 1908, as amended, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following described lands:

Sixth Principal Meridian

White River National Forest

T 6 S., R. 83 W.,
Sec. 26, NW¼SW¼;
Sec. 27, NE¼SE¼.

The area described aggregates 80 acres in Eagle County.

The purpose of this withdrawal is for the administration and protection of the Yeoman Park Administrative Site. No change is proposed in the purpose of this withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register.** The existing withdrawal will continue until such determination is made.

James D. Crisp,

Chief, Branch of Adjudication.

[FR Doc. 88-14231 Filed 6-22-88; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Alaska OCS Region; Outer Continental Shelf Advisory Board; Alaska Regional Technical Working Group Meeting

AGENCY: Minerals Management Service, Alaska OCS Region, Interior.

ACTION: Outer Continental Shelf Advisory Board, Alaska Regional Technical Working Group Committee; meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463.

The Alaska Regional Technical Working Group (RTWG), a committee of the Outer Continental Shelf (OCS) Advisory Board, is scheduled to meet from 9:00 a.m. to 4:00 p.m., August 10, 1988, in Room 601 of the Minerals Management Service, Alaska OCS Region offices at 649 East 36th Avenue, Anchorage, Alaska. The Alaska RTWG is one of six such committees of the OCS Advisory Board that provide advice to the Director, Minerals Management Service, on technical matters of regional concern regarding OCS prelease- and postlease-sale activities.

Topics which may be addressed at the meeting are:

(a) Joint US/USSR oil-spill response exercise.

(b) Fiscal Year 1990 Minerals Management Service Regional Studies Plan.

(c) OCS Mining Program Norton Sound Lease Sale.

(d) Wildlife Protection Working Group project.

(e) Arctic oil-spill research.

The Alaska RTWG meeting will be open to the public. Public seating may be limited. Interested persons may make oral or written presentations to the committee. A request to make a presentation should be made no later than August 1, 1988, to Alan D. Powers, Regional Director, Alaska OCS Region, 949 East 36th Avenue, Room 110, Anchorage, Alaska 99508-4302, (907) 261-4010. A request to make an oral statement should be accompanied by a written summary of the statement.

Minutes of the meeting will be available 70 days after the meeting for public inspection at the Minerals Management Service, Alaska OCS Region Library, 949 East 36th Avenue, Anchorage, Alaska 99508–4302, and at the Office of Advisory Board Support, Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

Dated: June 15, 1988.

Alan D. Powers,

Regional Director, Alaska OCS Region.

[FR Doc. 88–14176 Filed 6–22–88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5409, Block 96, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intercoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on June 10, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 13, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–14131 Filed 6–22–88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Walter Oil and Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil and Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6055, Block 699, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on June 10, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 13, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–14132 Filed 6–22–88; 8:45 am]

BILLING CODE 4310-MR-M

Receipt of Outer Continental Shelf Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Anadarko Petroleum Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6088, Block A–66, Brazos Area, offshore Tesas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Port O'Connor, Texas.

DATE: The subject DOCD was deemed submitted on June 14, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 15, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-14232 Filed 6-22-88; 8:45 am]

BILLING CODE 4310-MR-M

Receipt of Outer Continental Shelf Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company U.S.A. Unit Operator of the Grand Isle Block 16 Federal Unit Agreement No. 14-08-001-2932, has submitted a DOCD describing the activities it proposes to conduct on the Grand Isle Block 16 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on June 9, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Nixdorff; Minerals Management Service, Gulf of Mexico OCS Region, Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736-2660.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR

Date: June 13 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-14233 Filed 6-22-88; 8:45 am]

BILLING CODE 4310-MR-M

Receipt of Outer Continental Shelf Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4745, Block 40, Sabine Pass Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on June 17, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. E.H. Simoneaux; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 17, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-14234 Filed 6-22-88; 8:45 am]

BILLING CODE 4310-MR-M

Receipt of Outer Continental Shelf Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Unocal has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0297, Block 26, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on June 15, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m, Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Lars T. Herbst; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2533.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OSC Land Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 15, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-14235 Filed 6-22-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Nogales International Wastewater Treatment Plant Expansion; Nogales, AZ; Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality Final Regulations (40 CFR Parts 1500–1508); and the U.S. Section's Operational Procedures for Implementing section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083–44094); the U.S. Section hereby gives final notice that an environmental impact statement is not being prepared for expansion of the Nogales International Wastewater Treatment Plant (NIWWTP) at Nogales, Arizona. A notice of finding of no significant impact dated May 6, 1988 provided a thirty (30) day comment period before making the finding final. The notice was published in the **Federal Register** on May 18, 1988 (53 FR 17770–17771).

ADDRESS: Mr. J.S. Valdez, Principal Engineer, Operations, International Boundary and Water Commission, United States and Mexico, United States Section, 4171 North Mesa, C–310, El Paso, Texas 79902. Telephone: (915) 534–6693, FTS 570–6693.

SUPPLEMENTARY INFORMATION:

Proposed Action

The U.S. Section proposes to upgrade and expand the Nogales International Wastewater Treatment Plant (NIWWTP) to accommodate an additional 4.0 mgd capacity for a total treatment capacity of 17.2 mgd. The additional capacity includes Mexico's part in the proposed expansion of the international plant.

The existing design capacity of the NIWWTP, which began operation in 1972 to provide service for the cities of Nogales, Arizona and Nogales, Sonora, Mexico, is 8.2 mgd with capacity allocations of 4.95 mgd to Nogales, Sonora and 3.25 mgd to Nogales, Arizona. Currently, the NIWWTP is treating an average daily flow of approximately 8.6 mgd including approximately 3.5 mgd from Nogales, Arizona and 5.1 mgd from Nogales, Sonora. Excessive flows directly affect the international plant's performance, resulting in overloading and decreased detention time which, in turn, causes effluent violations. The proposed upgrading and expansion of the existing system will prevent these violations from occurring.

The Mexican Section and U.S. Section of the Commission are presently considering a proposed agreement recommending Mexico join in the expansion of the NIWWTP by purchasing a capacity up to 4.95 mgd in addition to the 4.95 mgd presently assigned to Mexico at the international plant. The existing lagoon treatment system would be upgraded to a complete mix cell system followed by a series of partial mix cells with a total detention time at design flow approximately equal to five (5) days at 13.2 mgd and four (4) days at 17.2 mgd. Treatment of Mexico's additional capacity would be provided by additional aeration and minor modifications to the 13.2 mgd total treatment capacity plant without expansion of the physical areas of the existing plant site.

Alternatives Considered

Six alternatives were considered in addition to the "no action" alternative; however, three were eventually eliminated from further consideration because of failure to meet alternative evaluation criteria. Three biological treatment alternatives were selected for further evaluation: Short Detention Time Aerated Lagoon Process (the preferred alternative), Sequential Batch Reactor Process, and Biotower/Activated Sludge Process.

These alternatives satisfied all criteria for alternative selection including: Reliable and consistent effluent quality compatible with National Pollution Discharge Elimination System permit or effluent reuse requirements; adaptability/flexibility in meeting future variations in effluent standards; and ability to be constructed within the confines of the existing plant site since expansion of the physical area of the plant is restricted by the Santa Cruz River and railroad right-of-way.

Environmental Assessment

The U.S. Section has adopted, with supplemental information, the Arizona Department of Environmental Quality (ADEQ) Environmental Assessment (EA) for plant expansion of the NIWWTP dated August 1987. Whereas, the ADEQ environmental assessment only considered in the final analysis a total treatment capacity of 13.2 mgd which includes 1.45 mgd future reserved capacity either for purchase by Mexico or Nogales, Arizona; the U.S. Section supplements that EA with consideration of an additional 4.0 mgd (17.2 mgd total treatment capacity) to include additional capacity for Mexico's part in the international plant expansion.

Findings of the Supplemented Environmental Assessment

The U.S. Section has determined that the ADEQ analysis (EA, pp. 11–13) of the environmental impacts for the 13.2 mgd capacity plant would be the same for the 17.2 mgd capacity plant. An overall positive environmental effect is associated with the expansion of the international plant whether that expansion is for 13.2 mgd or 17.2 mgd total treatment capacity. In summary:

1. No adverse effects are expected from treatment of Mexico's additional capacity on surface water of groundwater quality or quantity. No significant impact is expected on the flood plain nor will the expansion project increase the probability of flood damage to the international plant. The proposed expansion will neither benefit nor degrade air quality in the area.

2. No negative impact is expected on flora and fauna in the area. Expansion for treatment of Mexico's additional 4.95 mgd capacity will not require additional surface area beyond that already available at the existing international plant site. Effluent discharges will continue with better quality waters, and impacts to aquatic biota are not expected.

3. No adverse effects are expected for socio-economic factors, and no cultural resource impacts are expected.

4. No long-term detrimental environmental impacts are anticipated as a result of the construction or operation of the proposed expansion for Mexico's additional capacity. Long-term environmental impacts for the 17.2 mgd capacity plant are beneficial in nature and far exceed any potential negative impacts.

5. Short-term construction impacts are expected to be temporary and minimal in both duration and area. Mitigation measures to minimize these impacts are proposed.

The U.S. Section has received no comments that would effect a change in the proposed action; therefore, on the basis of the Supplemented Environmental Assessment, a finding of no significant impact is adopted and an

environmental impact statement will not be prepared.

The Final Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Date: June 13, 1988.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 88-14221 Filed 6-22-88; 8:45 am]

BILLING CODE 4710-03-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Commission Decision Not To Review an Initial Determination Granting Partial Summary Determination

AGENCY: International Trade Commission.

ACTION: Partial summary determination of investigation with respect to one erasable programmable read only memory (EPROM) device.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 113) issued by the presiding administrative law judge (ALJ) granting partial summary determination with respect to one EPROM at issue in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, DC 20436, telephone 202-252-1093.

SUPPLEMENTARY INFORMATION: On May 24, 1988, the presiding ALJ issued an ID (Order No. 113) granting partial summary determination with respect to one EPROM at issue in the investigtion. No petitions for review or comments from government agencies were received. It is apparent from the papers filed before the ALJ and the ID, as well as from complainant Intel Corporation's failure to file a petition for review of the ID, that there is no genuine issue as to any material fact, and that respondent Atmel is therefore entitled to partial summary determination as a matter of law with respect to the EPROM at issue.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Rules of Practice and Procedure (19 CFR 210.53.)

Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal at 202-252-1810.

By order of the Commission.

Issued: June 20, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-14181 Filed 6-22-88; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under Resource Conservation and Recovery Act; Ashland Chemical Co.

In accordance with Departmental policy, notice is hereby given that on May 17, 1988, a proposed Consent Decree in *United States* v. *Ashland Chemical Company* was lodged with the United States District Court for the Northern District of Ohio. The proposed Consent Decree provides for compliance with closure requirements under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, at defendant's facility in Akron, Ohio, for payment by defendant of a civil penalty and for performance of corrective action at the facility pursuant to 42 U.S.C. 6928(h).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ashland Chemical Company*, D.J. reference #90-7-1-430.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Ohio, 1404 East Ninth Street, Cleveland, Ohio 44114, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the poposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-14134 Filed 6-22-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; Seibu Railway Co., Ltd., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 31, 1988, a proposed Consent Decree in *United States of America v. Seibu Railway Co., Ltd., et al.*, Civil Action No. 86-0710, was lodged with the United States District Court for the District of Hawaii. The complaint filed by the United States alleged violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, set under the Clean Air Act, by defendants due to building demolition activities in Honolulu, Hawaii. The complaint sought injunctive relief and civil penalties. The injunctive claim was satisfied when defendants permitted an inspection of the building prior to demolition, which enabled the Environmental Protection Agency to determine that asbestos materials had been removed. The Consent Decree provides for a civil penalty of $125,000.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Seibu Railway Co., Ltd., et al.*, D.J. Ref. 90-5-2-1-1019.

The proposed Consent Decree may be examined at the office of the United States Attorney, Room C-242, U.S. Court

House, 300 Ala Moana Blvd., Honolulu, Hawaii and at the Region 9 Office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, CA. Copies of the Consent Decree may be examined at the Environmental Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-14133 Filed 6-22-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—The Importance of Lubricating Oil in Diesel Particulate Emissions (Southwest Research Institute)

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on May 27, 1988, disclosing the addition of a party to the group research project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the SwRI advised that Onan Corporation has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project.

On August 21, 1987, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 18, 1987, 52 FR 35335. On December 22, 1987, SwRI filed an additional written notification. The Department published notice in the **Federal Register** in response to the additional notification on January 19, 1988, 53 FR 1418.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-14135 Filed 6-22-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration; Knoll Pharmaceuticals

By notice dated December 10, 1987, and published in the **Federal Register** on December 15, 1987; (52 FR 47643), Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	II
Hydromorphone (9150)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 17, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-14183 Filed 6-22-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Knoll Pharmaceuticals

By notice dated March 6, 1988, and published in the **Federal Register** on April 6, 1988 (53 FR 11353), Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of hydrocodone (9193), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 17, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-14184 Filed 6-22-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration, Mallinckrodt, Inc.

By Notice dated February 17, 1988, and published in the **Federal Register** on February 24, 1988; (53 FR 5480), Mallinckrodt, Inc., Department CB, Mallinckrodt and Second Streets, St. Louis, Missiouri 63147, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254)	II
Bulk dextropropoxyphene (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extracts (9620)	II
Tincture of opium (9630)	II
Powdered opium (9639)	II
Granulated opium (9640)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 17, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR. Doc. 88-14185 Filed 6-22-88; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Registration; Mallinckrodt, Inc.

By notice dated February 18, 1988, and published in the **Federal Register** on February 24, 1988 (53 FR 5480), Mallinckrodt, Inc., Department CB, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw opium (9600)	II
Opium plant form (9650)	II
Concentrate of poppy straw (9670)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with 21 CFR 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 17, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-14186 Filed 6-22-88; 8:45 am]

BILLING CODE 4410-09-M]

Importation of Controlled Substances; Registation; Mallinckrodt, Inc.

By notice dated March 28, 1988, and published in the **Federal Register** on April 1, 1988; (53 FR 10573), Mallinckrodt, Inc., Department CB, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 17, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-14187 Filed 6-22-88; 8:45 am]

BILLING CODE 4410-09-M

Importation Of Controlled Substances; Registration; Penick Corp.

By notice dated March 22, 1988, and published in the **Federal Register** on March 29, 1988; (53 FR 10160), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw opium (9600)	II
Opium plant form (9650)	II
Concentrate of poppy straw (9670)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 17, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-14188 Filed 6-22-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Access To Health Care of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 10:00 a.m., Wednesday, July 13, 1988, in Seminar Room #4, C-5515, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This eight member work group was formed by the Advisory Council to study issues relating to access to health care.

The purpose of the July 13 meeting is to hear testimony bearing on the potential impact and implications of proposed access to health care legislation—both at the federal and state level—with respect to the Department of Labor's role under ERISA. It is intended that testimony will be received with regard to the recently enacted Massachusetts access to health care legislation, Senator Kennedy's bill, S. 1265, The Minimum Health Benefit For All Workers Act of 1987, and alternative approaches endorsed by the Health Insurance Association of America. The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before July 11, 1988 to William E. Morrow, Deputy Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Deputy Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 11, 1988.

Signed at Washington, DC, this 20th day of June, 1988.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 88-14238 Filed 6-22-88; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Form Submitted to the Office of Management and Budget for Clearance

The following package was submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Subject: Criminal Referral Form—NCUA 2362

Frequency: Federally insured credit unions will complete this form only in reporting certain criminal acts against the credit unions.

Burden: The average time required to complete the report is 1.50 hours.

Abstract: All federally insured credit unions are required to complete and, within seven business days, to report suspected criminal activity on NCUA

2362 to the NCUA regional director, the U.S. Attorney, and the Federal Bureau of Investigation. The requirement provides for timely and specific information needed for decisions regarding investigation and prosecution.

Respondents: Federally Insured Credit Unions

OMB Desk Officer for NCUA

Copies of the above information collection clearance package can be obtained by calling the NCUA Administrative Office on (202) 357–1055.

Written comments and recommendations for the listed information and collection should be sent directly to the OMB desk officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: June 15, 1988.

Becky Baker,

Secretary of the NCUA Board.

[FR Doc. 88–14138 Filed 6–22–88; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Initiative for Interdisciplinary Artists) to the National Council on the Arts will be held on July 13, 1988, from 9:00 a.m.–5:30 p.m., in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of the meeting will be open to the public on July 13, 1988, from 3:00–5:00 p.m. for a guidelines and policy issues discussion.

The remaining session of this meeting on July 13, 1988, from 9:00 a.m.–3:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9) (b) of section 552b to Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

June 17, 1988.

[FR Doc. 88–14236 Filed 6–22–88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–327]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a one-time only schedular exemption from the Type B and C testing requirements of Appendix J to 10 CFR Part 50 to the Tennessee Valley Authority (the licensee) for the Sequoyah Nuclear Plant, Unit 1, located at the licensee's site in Hamilton County, Tennessee. The exemption was requested by the licensee by letter dated August 5, 1987.

Environmental Assessment

Identification of Proposed Action: This one-time only proposed exemption will permit the licensee to defer the required Type B and C leakage tests for Unit 1 until before the unit enters Mode 4 in returning to power from its current outage. Sections III.D.2 and III.D.3 of Appendix J to 10 CFR Part 50, require Type B and C Leakage Test, respectively, at intervals in no case greater than two years. Sequoyah Unit 1 shutdown for refueling on August 22, 1985. During refueling from late August 1985 to late November 1985, all Unit 1 Type B and C Tests were performed. Since that time, Unit 1 has remained in cold shutdown (Mode 5). The end of the two year test interval for Type B and C Tests expired in late August to November 1987. Because the Unit 1 outage extended past August 1987, the licensee in its letter dated August 5, 1987 requested that the Type B and C Tests be deferred on a one-time basis until before Unit 1 enters Mode 4.

The Sequoyah Unit 1 Technical Specifications 3.6.1.1 and 3.6.1.2 require that primary containment integrity be maintained only when in Modes 1, 2, 3 and 4. Type B and C Tests are required for assuring containment integrity in these modes. Unit 1 has been in Mode 5 (cold shutdown) since August 1985 and containment integrity has not been required because the reactor has been in the cold shutdown condition. Prior to entering Mode 4 (Heatup at Power), the licensee will conduct the Type B and C Leakage Tests in order to ensure containment integrity.

The Need for the Proposed Action: The proposed exemption is needed to permit the licensee to operate the plant without being in violation of the Commission's requirements.

Environmental Impact of the Proposed Action: The Commission has completed its evaluation of the proposed exemption to the testing schedular requirements of Appendix J. The need for such testing is to ensure that containment penetrations and isolation valves once closed do not leak following an accident. However, Sequoyah Unit 1 has been in cold shutdown since August 1987 when the 2-year test interval expired. Therefore, containment integrity has not been required for Unit 1 and the isolation valves have not needed to be and were not Type B and C tested. Prior to entering Mode 4 when containment integrity is required, the valves will be Type B and C tested.

The proposed exemption would accept the fact that the licensee did not conduct Type B and C tests by August to November 1987 and has delayed these tests until prior to enter into Mode 4 in its return to power from this outage when containment integrity is required. Because the plant has remained in Mode 5 since August 1987 and the licensee will conduct the tests prior to entry into Mode 4, the proposed exemption does not increase the probability or consequences of accidents, does not change types of any effluents that may be released offsite, and does not increase the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed exemption would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed exemption involves systems located within the restricted areas as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore,

the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Therefore, the proposed exemption does not significantly change the conclusions in the "Final Environmental Statement Related to the Operation of Sequoyah Nuclear Plant Units 1 and 2," dated July 1974.

Alternative to the Proposed Action: Because the staff has concluded that there is no significant environmental impact associated with the proposed exemption, alternatives with equal or greater environmental impacts were not evaluated.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of Sequoyah Nuclear Plant, Units 1 and 2" dated July 1974.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request for the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For details with respect to this action, see the request for exemption dated August 5, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 15th day of June 1988.

For the Nuclear Regulatory Commission.

Suzanne Black,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88-14156 Filed 6-22-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-498]

Houston Lighting & Power Co.; Consideration of Issuance of Amendment To Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-76, issued to Houston Lighting & Power Company (the licensee), for operation of the South Texas Project, Unit 1 located in Matagorda County, Texas.

The amendment would permit expansion of the spent fuel pool storage capacity by using high density spent fuel racks.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 25, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding or the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to Jose A. Calvo: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a

balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 8, 1988 as supplemented March 26, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Wharton Junior College Library, Wharton, Texas 77488.

Dated at Rockville, Maryland this 15th day of June, 1988.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Acting Director, Project Directorate—IV Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–14157 Filed 6–22–88; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–275 and 50–323]

Pacific Gas and Electric Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–80 and DPR–82, issued to the Pacific Gas and Electric Company (the licensee), for operation of the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, located in San Luis Obispo County, California.

In accordance with the licensee's application for amendments dated April 18, 1988 (reference LAR 88–03), the amendments would reduce the steam generator water level low and low-low setpoints from 15 percent of the narrow range span to 7.2 percent of the narrow range span. The change is based on replacement of the Barton 764 steam generator level transmitters with Rosemount 1154 transmitters, which have improved accuracy under severe environmental conditions.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 25, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated January 22, 1988, which is available for public inspection

at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 17th day of June, 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects.

[FR Doc. 88-14158 Filed 6-22-88; 8:45 am]

BILLING CODE 7590-01-M

PEACE CORPS

Agency Information Collection Activities Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of submission of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request to approve an extension to use the HOTLINE Employer Follow-up Questionnaire through July 31, 1991. This form is completed voluntarily by employers who have placed announcements in the HOTLINE job bulletin and provides information on number of returned Peace Corps volunteers who applied, were interviewed and/or were hired. The information is necessary for Peace Corps to determine the effectiveness of HOTLINE. One revision has been made. Peace Corps now clarifies the use of the information by stating that the information will only be used for intra-agency communications.

Information About the Questionnaire

Agency Address: Peace Corps, 806 Connecticut Ave, NW., Washington, DC 20526.

Title and Agency Number: HOTLINE Employer follow-up Questionnaire, Form Number PC-1510.

Type of Request: Form extension approval.

Frequency of Collection: On occasion.

General Description of Respondents: Employers who have placed announcements in HOTLINE.

Estimated Number of Respondents: 500 annually

Estimated Hours for Respondents to Furnish Information: 0.25 hours each.

Respondents Obligation to Reply: Voluntary

Comments: Comments on this form should be directed to Francine Picoult, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20523.

A copy of the form may be obtained from Nedra Hartzell, Returned Volunteer Services, Peace Corps, 806 Connecticut Ave, NW., Washington, DC 20526; telephone: (202) 254-8326. This notice is issued in Washington, DC on June 20, 1988.

Margaret H. Thome,

Associate Director for Management.

[FR Doc. 88-14147 Filed 6-22-88; 8:45 am]

BILLING CODE 6051-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25802; File No. SR-Phlx-87-37]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On November 10, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Commission copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder to adopt new Rules 600-604 and rescind existing Rules 600-697, with the exception of Rules 631, 652, 691, and 692 which will be redesignated as Rules 605-608.

Notice of the proposal together with its terms of substance was provided in a Commission Release (Securities Exchange Act Rel. 25360, February 18, 1988) and by publication in the **Federal Register** 53 FR 5671. No comments were received in connection with the proposal.

Proposed Rule 600 provides that each member and member organization must file with the Secretary of the Exchange ("Secretary") an address where notices may be served. The rule further provides that subsequent changes in member or member firm addresses are to be submitted to the Office of the Exchange Secretary ("Secretary's office") prior to the effective date. Proposed rule 601 prohibits a member or member firm from establishing a branch office without providing advanced notice to the Secretary's office. [1] In addition, the rule provides that such offices generally are to be supervised by a partner, a voting stockholder, or a manager [2] and will be subject to applicable Exchange rules.

Certificates of Membership are addressed in proposed Rule 602. Under this provision, the Secretary's office would be required to provide Certificates of Membership to each member and member organization. [3] Further, upon the transfer of membership by a member holding a Certificate of Membership, the dissolution or insolvency of the member organization, the permanent closing of the office in which the Certificate of Membership is displayed, or upon demand by the Exchange, the member or member organization would be required to return the Certificate of Membership to the Exchange.

Proposed Rule 603 generally requires members or member firms to maintain control of branch offices. Further, the rule prohibits joint occupation of these offices with non-members, although the Exchange may waive this prohibition if it determines that, under existing circumstances, the public is not likely to be misled by such joint occupation. In addition, members or member firms that conduct non-securities related activity in their branch offices would be required to inform their customers that such activity is subject neither to regulation nor oversight by the Exchange or the Commission.

Finally, upon the termination of employment of any associated person of a member or member organizations, proposed Rule 604 provides that such member or member organization would be required immediately to file with the Exchange a Form U-5 Uniform Termination Notice for Securities Industry Representatives and/or agents to the Central Registration Depository (CRD).

According to the Exchange, the proposed rule change is designed to revise its Series 600 rules to reflect current Phlx policy and procedures relating to the regulation of members and member organizations. Further, the Exchange notes that the recission of existing Rules 600-697 is appropriate because these rules were adopted to regulate fixed commission rates among members and member organizations, [4]

[1] According to the Exchange, the proposed rule would apply to members and member organizations for which the Exchange is the Designated Examing Authority—*i.e.*, firms that conduct business on the Exchange floor.

[2] *See* letter from Michele R. Berkowitz, staff counsel, Phlx, to Ervin Jones, staff attorney, Division of Market Regulation, dated March 30, 1988.

[3] The Certificates of Membership will at all times be the property of the Exchange. Further, additional Certificates of Membership will be made available upon request.

[4] *See* letter from Richard T. Chase, Executive Vice President, Phlx, to Sharon Lawson, Branch Chief, Division, dated April 19, 1988.

which were abolished in 1975. [5] Accordingly, these rules are no longer applicable. Finally, the Exchange maintains that the proposal is consistent with section 6(b)(5) of the Act in that the proposal furthers the protection of investors as well as promotes the public interest.

After careful consideration, the Commission believes that the proposal to revise existing Exchange rules regulating members and member organizations is appropriate. In particular, the Commission believes that the proposal will facilitate Exchange oversight of its members and member organizations in accordance with its self-regulatory obligations prescribed in the Act. For example, the Commission believes that proposed Rule 600, which requires members to provide and update addresses for service of Exchange notices, should ensure that these members and member organizations are informed of any disciplinary action against them, in addition to changes in Exchange rules, policies, or procedures affecting their operations, including notices containing rule interpretations and compliance instructions. In addition, the Commission believes that the new disclosure requirement contained in proposed Rule 603 will protect investors and further the public interest as investors will be made aware that non-securities related activity occurring at member firm branch offices is not regulated by the Commission or the Phlx. In addition, the prohibition on joint occupation of offices with non-members, unless specifically waived by the Phlx, should help to ensure that the public is not misled by non-member activity in the same office.

With regard to the rescission of the Phlx rules governing fixed commissions, the Commission believes that it is appropriate for the Exchange to delete these rules as current federal securities laws no longer provide for fixed commissions. Finally, the Commission notes that the Exchange retains several existing rules relating to member firm marketing activity, wire connections, registration fees, and other charges. These rules will continue to provide guidance to members and member firms as to their obligations as well as to the kinds of member firm activity that is permissible in these areas. Based upon the above, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder and in particular with Section 6(b)(5) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 14, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14178 Filed 6-22-88; 8:45 am]

BILLING CODE 8010-01-M

[5] *See* 15 U.S.C. 78a, *et. seq.*, as amended by Pub. L. No. 94-29 (June 4, 1975).

[File No. 500-1]

Hiex Development USA, Inc, Order of Suspension of Trading

It appears to the Securities and Exchange Commission that there is a lack of current and adequate information concerning the securities of Hiex Development USA, Inc. ("Hiex") and that questions have been raised concerning, among other things, the adequacy and accuracy of information contained in a Form 10 registration statement filed with the Commission on March 30, 1988, and in a document entitled "Due Diligence File Hiex Development USA, Inc.", which was furnished to, among others, market makers in Hiex stock. The questioned information pertains to the valuation of Hiex's assets, substantial purchase commitments, oil and gas reserve data, and the Company's financial and operating history. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Hiex Development USA, Inc.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Hiex Development USA, Inc., over-the-counter or otherwises, is suspended for the period from 12:00 p.m. EDT, June 20, 1988 through 11:59 p.m. EDT, on June 29, 1988.

By the Commission

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14179 Filed 6-22-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16440; 812-6924]

Home Group Trust; Application

June 17, 1988.

ACTION: Notice of Application for an Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Home Group Trust (the "Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d), and Rule 22c-1 promulgated thereunder, and approval of exchange offers requested under Section 11(a).

Summary of Application: Applicant seeks: (1) An order permitting the Applicant to assess a contingent deferred sales charge (the "Charge") on certain redemptions of Mutual Fund shares, and to permit the Applicant to waive such charge under certain conditions, and (2) an order permitting the Applicant to exchange shares of the Applicant's initial and future funds for sales in certain of the Applicant's other funds on the basis of relative net asset value per share, subject to a $5.00 fee for any exchange, regardless of the number of shares exchanged.

Filing Dates: The application was filed on November 20, 1987 and an amendment was filed on June 17, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 6, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Steven R. Howard, Esq., Debevoise & Plimpton, 875 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Regina Hamilton (202) 272-2856 or Branch Chief Karen L. Skidmore (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant is an open-end, management investment company which

was organized on August 3, 1987 as a business trust under the laws of the Commonwealth of Massachusetts. The Applicant has filed with the SEC a Registration Statement on Form N–1A under the 1940 Act and the Securities Act of 1933, as amended, which has not yet become effective. The Applicant currently has seven separate investment portfolios: Home Cash Reserves ("Cash Reserves"), Home Government Reserves ("Government Reserves"), Home Federal Tax-Free Reserves ("Federal Tax-Free Reserves"), Home New York Tax-Free Reserves ("New York Tax-Free Reserves", and, together with Cash Reserves, Government Reserves and Federal Tax-Free Reserves, the "Money Market Funds"), Home Growth and Income Fund ("Growth and Income Fund"), Home High Yield Bond Fund ("High Yield Bond Fund"), and Home Government Securities Fund ("Government Securities Fund" and, together with Growth and Income Fund and High Yield Bond Fund. The "Mutual Funds") (each fund hereafter sometimes referred to individually as the "Fund" and collectively as the "Funds").

2. The Funds will be managed by the Board of Trustees. Home Capital Services, Inc. ("Home") will act as the investment adviser for the Funds. Gruntal & Co., Incorporated ("Gruntal & Co.") will act as principal distributor of the shares of each Fund. Provident Financial Processing Corporation will act as transfer agent ("Transfer Agent") for the Funds. Both Gruntal & Co. and Home are wholly-owned subsidiaries of The Home Group, Inc.

3. The Applicant proposes to sell shares of each Fund without an initial sales charge. The Applicant proposes to: (1) Institute plans of distribution in accordance with Rule 12b–1 under the 1940 Act and (2) with respect to the Mutual Funds, offer shares of the Mutual Funds subject to the Charge. The Applicant's shareholders will also have the right to exchange shares of a Mutual Fund for shares of any other Mutual Fund and to exchange shares of a Money Market Fund for shares of any other Money Market Fund without incurring any Charge, although the charge will continue to apply to Mutual Fund shares so exchanged. There will be a fee of $5.00 charged by the Transfer Agent for effecting each exchange regardless of the number of shares so exchanged.

4. The Applicant proposes to finance the Funds' distribution expenses pursuant to plans adopted in accordance with Rule 12b–1 under the 1940 Act (the "Plan"). Each Plan provides for a monthly payment by the Fund to reimburse Gruntal & Co. in such amounts that Gruntal & Co. may request for actual expenses incurred in distributing Fund shares. Each payment is based on the average daily value of the Fund's net assets during the preceding month and is calculated at an annual rate not to exceed 0.25% of a Fund's net assets. Gruntal & Co. may use amounts received under Plan for payments to broker-dealers (including itself), or other financial institutions for their assistance in distributing Fund shares and otherwise promoting the sale of Fund shares. Gruntal & Co. may also use all or any portions of such payments for the printing and distribution of prospectuses sent to prospective investors, the preparation, printing and distribution of sales literature and expenses associated with media advertisements and telephone services.

5. In order to protect Gruntal & Co. from loss of the economic benefit of the payments made under the Mutual Funds' Plans, certain redemptions of shares of the Mutual Funds will be subject to the Charge. The proceeds of the Charge will be payable to Gruntal & Co., as distributor, and will be used by Gruntal & Co. to defray in whole or in part costs incurred in connection with the sale and distribution of Mutual Fund shares, which costs are expected to be greater than the costs incurred in connection with the sale and distribution of Money Market Fund shares. These costs include payments of sales commissions to various brokers who are authorized by the Mutual Funds to sell their shares to the public.

6. The Charge will be imposed only if a shareholder's redemption causes the current value of that shareholder's holdings in a Mutual Fund to fall below the total dollar amount of that shareholder's purchases of such shares within the preceding five years. No charge will be imposed for redemptions whose amounts represent (1) appreciation in the net asset value of a shareholder's holdings ("Net Appreciation Value"), (2) increases in the value of a shareholder's holdings representing reinvestment of dividend and capital gain distributions ("Reinvestment Value") or (3) purchase payments made more than five years prior to the redemption date ("Old Capital"). To calculate the Charge due, if any, upon a redemption, the Mutual Funds will first deduct from the dollar amount of the redemption request those amounts, if any, representing Net Appreciation Value, Reinvestment Value and Old Capital. The balance, if any, will be subject to the Charge which will be calculated by determining the number of years which have elapsed since the shareholder made the purchase from which an amount is being redeemed *i.e.*, 5% if the redemption occurs during the first year after purchase and declining by 1% per year. No Charge will be imposed on shares redeemed after five years from the date of purchase. The Mutual Funds will, in performing this calculation, assume that the purchase payments, if any, being redeemed will be from the earliest possible purchase payment.

7. Under the Applicant's proposal, no Charge will be imposed on any exchange of shares of a Mutual Fund for shares of any other Mutual Fund, although the Charge will continue to apply to any shares so exchanged. A shareholder who redeems shares from a Fund has 30 days to reinvest the amount so redeemed without incurring the imposition of the Charge on his original investment. This 30-day reinvestment privilege may be exercised only once by a shareholder. No Charge will be assessed for redemptions if the investor initially purchased at least $1 million of shares at one time and maintains that account for at least one year. In addition, the Charge will be waived with respect to the following transactions: (1) Redemptions effected by accounts managed by Home; (2) redemptions effected by Trustees of the Applicant; (3) redemptions by employees of The Home Group, Inc. and its affiliates; (4) redemptions by the estate of a deceased shareholder; and (5) redemptions effected through a Fund's automatic withdrawal plan.

8. The Applicant also proposes to offer to exchange shares of a Mutual Fund for shares of any other Mutual Fund and to exchange shares of a Money Market Fund for shares of any other Money Market Fund on the basis of their relative net asset values on the day of the exchange. The Transfer Agent will perform such transactions at a charge of $5.00 for each exchange regardless of the number of shares exchanged. The minimum requirement for each exchange is $500. Unless an investor closes out his account in a Fund by making an exchange, in no instance will the exchange be made if the effect of the exchange is to leave less than $500 in such accounts.

9. The $5.00 fee is paid to the Trust's Transfer Agent and no part of the fee is paid to Gruntal & Co. or Home. However, if a shareholder exchanges shares of a Money Market Fund for shares of a Mutual Fund, sales loads may provide an economic incentive for Gruntal & Co. to initiate such exchanges for its own benefit. As a result, Gruntal

& Co. will notify its registered representatives of the exchange program, and instruct them not to actively solicit exchanges. Because exchanges will be made solely at the request of the shareholders, the Trust does not foresee the likelihood of churning activities.

Applicant's Legal Conclusions

1. All of the elements of its proposals are in the interest of the Applicant's shareholders and are appropriate and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The Applicant specifically requests that any exemption the Commission may grant cover not only the initial Funds, but also any additional Funds the Applicant may offer in the future on substantially the same basis as the Applicant will offer the shares of its initial Funds. The prospective relief requested on behalf of any such additional Funds shall be availed of only on the terms and conditions described in the application.

2. A contingent deferred sales charge is functionally a deferred payment of sales load. Imposition of the Charge and calculation of the amount of the Charge depends only on the amount and duration of the shareholder's initial investment. As such, the Charge should not be understood as affecting the calculation of redemption price. Rather, it should be understood as a deduction from redemption proceeds which is designed to compensate Gruntal & Co. for its sales expenses to the extent those expenses cannot be offset by payments made under a Mutual Fund's Plan. The Charge gives shareholders the advantage of having a greater portion of their investment dollars invested in the Mutual Funds from the time of their purchase of shares than would be the case if the shares were sold subject to a traditional front-end sales load. The Charge is fair to Mutual Fund shareholders because it in effect applies only to redemptions of amounts representing purchase payments for Mutual Fund shares and does not apply to increases in the value of a shareholder's account through capital appreciation or to increases representing reinvestment of distributions. Accordingly, shareholders obtain the advantage of not being subjected to a traditional front-end sales load.

3. Each waiver is justified on the grounds that imposing the Charge in the circumstances contemplated would either be (1) unfair due to the unexpected nature of the redemptions, (2) unnecessary because the original sale of the shares being redeemed cost the Trust little or nothing in sales expenses in the first place, or (3) inconsistent with the reduced costs incurred in connection with a large investment. As such, legitimate reasons for the waivers exist, and the Applicant submits that neither the Applicant nor the shareholders of the Mutual Funds are harmed or unfairly discriminated against in any way and the waivers are consistent with the policies and provisions of the 1940 Act.

4. Because the Funds make available a variety of investment portfolios, the exchange provilege gives investors an inexpensive and convenient means of responding to changes in investment needs or market conditions. The imposition of a nominal $5.00 fee for this service is fair, appropriate and consistent with the protection of shareholders and the purposes fairly intended by the policy and provisions of the 1940 Act in that the fee is used only to defray administrative expenses which would otherwise be borne by the shareholders as a whole, most of whom will not use the exchange privilege.

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. Applicant will comply with the provisions of Rule 12b-1 under the 1940 Act as they are now in effect and as they may be revised in the future.

2. Applicant will comply with the provisions of Rule 22d-1 under the 1940 Act.

3. Any administrative fee will be uniformly applied to all shareholders participating in the exchange program.

4. Applicant will comply with the provisions of proposed Rule 11a-3 under the 1940 Act when and if it is adopted by the SEC.

5. The Trust reserves the right to modify or terminate the exchange privilege, such right being fully disclosed in the prospectus of each Fund. The Trust will give shareholders a minimum of 60 days' written notice before any termination or modification of the exchange privilege will take effect. The Trust will secure an order approving any modification to the exchange program, except a reduction of the administrative fee, but not upon termination of the exchange program.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz

Secretary.

[FR Doc. 88-14180 Filed 6-22-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/1199]

Advisory Committee for International Investment, Technology and Development; Meeting

The Department of State will hold a meeting of the Advisory Committee on International Investment, Technology and Development on July 20, 1988 from 9:00 a.m. to 1:00 p.m. The meeting will be held in Conference Room 1107 of the Department of State, 2201 "C" Street, NW. Washington, DC 20520.

The agenda and approximate times topics will be discussed are below:

—9:00 Review of agenda and introduction of first speaker by Professor Isaiah Frank of the Johns Hopkins School for Advanced International Studies.

—9:05 Welcoming remarks by Assistant Secretary of State for Economic and Business Affairs Eugene J. McAllister

—9:20 Brief reports on the April meeting of the UN Commission on Transnational Corporations, the ratification of the Multilateral Investment Guarantee Agency, OPIC reauthorization, and the Congressional status of the bilateral investment treaties by Marilyn Meyers, Director of the Office of Investment Affairs in the State Department. Followed by questions and comments by committee members.

—9:45 Report on the U.S. investment initiative at the OECD by Deputy Assistant Secretary of State for Economic and Business Affairs William B. Milam. The initiative includes proposals on strengthening the National Treatment Instrument, support for the GATT talks on trade related investment, and increasing attention to LDC investment questions. The National Treatment Instrument is likely to be strengthened in the CIME's 1990 Review, but in return other OECD delegations probably will seek changes in the OECD Guidelines. Followed by comments and questions by members of the group.

—10:25 Coffee Break

—10:45 Proposals for an investment policy for the twenty-first century by Donald L. Guertin of the Atlantic Council. Followed by comments and questions by members of the group.

—11:25 Comments by Charles Goldman, on the investment aspects of the EC's 1992 consolidation. Followed

by questions and comments by members of the group.

—12:00 Short presentation on inward investment issues by Stephen Canner, Director of the Office of Investment Affairs at the Treasury Department. Followed by comments and questions by members of the group.

—12:30 Meeting closes.

Access to the Department of State is controlled. Therefore, membes of the public wishing to attend the meeting must contact the Office of Investment Affairs (202) 647–2585 in order to arrange admittance. Please use the "C" Street entrance.

Robert C. Reis, Jr.,

Executive Secretary.

June 2, 1988.

[FR Doc. 88–14237 Filed 6–22–88; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD–88–045]

Public Hearing—Bridges; Proposed Replacement of Bridge Between Salem and Beverly, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given that the Commandant has authorized a public hearing to be held by the Commander, First Coast Guard District, at Salem, Massachusetts. The purpose of the hearing is to consider an application by the Massachusetts Department of Public Works (DPW) for Coast Guard approval of the location and plans of a proposed four-lane fixed vehicular bridge across the Danvers River, mile 0.1, between the city of Salem and the town of Beverly, Massachusetts, to replace the existing Route 1A swing bridge. A previous bridge permit issued by the Coast Guard for this project in 1982 expired because DPW failed to begin construction within the required time frame. A complete revised permit application was received from DPW on June 14, 1988. Additional navigational concerns have become evident since the issuance of the 1982 permit; hence, the forthcoming hearing will hear comments on the additional information developed and the changing conditions since 1982. All interested persons may present data, views and comments, orally or in writing, concerning the impact of the proposed bridge on navigation and the human environment.

DATE: July 26, 1988 from 1:00 p.m. to 5:00 p.m., and 7:00 p.m. until all speakers in attendance wishing to comment have provided comments.

ADDRESS: The hearing will be held at the auditorium of the Salem High School, 77 Wilson Street, Salem, Massachusetts 01970.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Kassof, Supervisory Bridge Management Specialist, First Coast Guard District, Bldg. 135A, Governors Island, New York, New York 10004–5073, (212) 668–7994, or Mr. John McDonald, Bridge Management Specialist, First Coast Guard District, 408 Atlantic Avenue, Boston, Massachusetts 02210–2209, (617) 223–8364.

SUPPLEMENTARY INFORMATION: The proposed replacement bridge will be 2,000 feet in length between north and south abutments. The south approach between North Street in Salem and the south abutment will measure 4,877 feet while the north approach between Cabot Street touchdown in Beverly and the north abutment will be 240 feet. The total bridge project length will be 7,117 feet. The proposed bridge will cross the Danvers River just downstream of the existing Massachusetts Bay Transit Authority railroad swing bridge. The proposed bridge has been designed with a steel and concrete alternative. The minimum vertical clearance will be 49.3 feet above mean high water for the steel alternative and 49.1 feet above mean high water for the concrete alternative. A horizontal clearance of 104 feet between fenders measured normal to the axis of the channel will be provided with each design alternative. A ramp which will connect the proposed bridge to existing Bridge Street in Salem (Bridge Street Connector) has been designed. It will cross a navigable cove within the Danvers River and will provide a minimum vertical clearance of 16 feet above mean high water and a horizontal clearance of 103 feet measured normal to the axis of the channel.

The purpose of this project is to replace the existing Route 1A swing bridge as part of a major transportation improvement program in the Peabody-Salem-Peabody area. This improvement project has been studied and planned for over 20 years with many changes to the plan being made over the years. Several boat yards and marinas operating along the Danvers River estuary have expressed concern with the proposed clearances indicating that their businesses would be limited to servicing only those vessels that would pass under the proposed fixed bridge. In granting the permit in 1982, the Coast Guard recognized that the proposed bridge would restrict navigation, but concluded that, after balancing the competing interests, the design was acceptable. This decision was upheld in subsequent litigation. A new study of the navigational impacts of a bridge in this location has recently been completed by the Coast Guard and is available for examination at the offices of the contact officials listed above. The decision on the current application will be based on all available information.

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should notify the Commander (obr), First Coast Guard District, Governors Island, New York, New York 10004–5073, prior to the hearing date. Such notification should include the approximate time required to make the presentation. Comments previously submitted are a matter of record and need not be resubmitted at the hearing. Speakers are encouraged to provide written copies of their oral statements to the hearing officer at the time of the hearing.

A transcript of the hearing, as well as written comments received outside of the hearing, will be available for public review in the offices of the First Coast Guard District approximately 30 days after the hearing date. All comments will be made part of the official case record.

Interested persons who are unable to attend the hearing may also participate in the consideration of the project by submitting their comments at the hearing or by mail to the Commander (obr), First Coast Guard District, by August 12, 1988. Copies of all written communications will be available for examination by interested persons at the Office of the Commander (obr), First Coast Guard District, (NY and Boston offices), between 8:30 a.m. and 3:00 p.m., Monday through Friday, except holidays. Each written comment should identify the proposed project, clearly state the reason for any objections, comments or proposed changes to the plans, and include the name and address of the person or organization submitting the comment. All comments received, whether in writing or presented orally at the public hearing, will be fully considered before final agency action is taken on the bridge permit application.

(Sec. 502, 60 Stat. 847, as amended; 33 U.S.C. 525; 49 U.S.C. 1655(g)(c); 49 CFR 1.46(c)

Dated: June 20, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation, Safety and Waterway Services.

[FR Doc. 88-14275 Filed 6-22-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Missoula County Airport, Missoula, Montana; Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Missoula County Airport (MSO) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing the proposed noise compatibility program that was submitted for Missoula County Airport under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before November 21, 1988.

EFFECTIVE DATE: The effective date of the FAA's determination on the Missoula County Airport noise exposure maps and the start of its review of the associated noise compatibility program is May 25, 1988. The public comment period ends July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM-611, 17900 Pacific Hwy S., C-68966, Seattle, WA 98168. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps for Missoula County Airport are in compliance with applicable requirements of Part 150, effective May 25, 1988. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before November 21, 1988. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Director of Airports for Missoula County Airport submitted to the FAA noise exposure maps, descriptions and other documentation which were produced during an airport Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by MSO. The specific maps under consideration are Exhibits I and J in the submission. The FAA has determined that these maps for Missoula County Airport are in compliance with applicable requirements. This determination is effective on May 25, 1988. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibility of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for MSO, also effective on May 25, 1988. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 21, 1988.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, paragraph 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land use and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue, SW., Room 615, Washington, DC.

Federal Aviation Administration, Airports Division, ANM-600, 17900 Pacific Hwy, S., C-68966, Seattle, Washington 98168.

Missoula County Airport, Missoula, Montana.

Questions may be directed to the individual named above under the heading, "FOR FURTHER INFORMATION CONTACT:"

Issued in Seattle, Washington, May 25, 1988.

Thomas H. Howard,

Acting Regional Director, Northwest Mountain Region.

[FR Doc. 88-14172 Filed 6-22-88; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program, Snohomish County Airport, Everett, WA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Manager of the Snohomish County Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96-52 (1980). On November 3, 1987, the FAA determined that the noise exposure maps submitted by the Airport Manager under Part 150 were in compliance with applicable requirements. On April 29, 1988, the Administrator approved the Snohomish County Airport noise compatibility program. Most of the program elements were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Snohomish County Airport noise compatibility program is April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop; Federal Aviation Administration; Northwest Mountain Region; Airports Division, ANM-611; 17900 Pacific Highway South; C-68966; Seattle, Washington 98168. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Snohomish County Airport, effective April 29, 1988.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such a program to be developed in consultation with interested and affected parties including the state, local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR), Part 150 is a local program, not a Federal program. The FAA does not substitute its judgement for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA.

Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Seattle, Washington.

Snohomish County submitted to the FAA the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted at Snohomish County Airport. The Snohomish County Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on November 3, 1987. Notice of this determination was published in the Federal Register on November 30, 1987.

The Snohomish County Airport noise compatibility program contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1991. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on November 3, 1987, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 24 proposed actions for noise mitigation on and off the airport and for review and monitoring of the program. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective April 29, 1988.

Outright approval was granted for 19 specific program elements. No action was taken at this time on Program Elements C.1 and C.3 because they relate to flight procedures which require additional information and analysis. Program Element A.7 was disapproved because it was not subjected to any analysis in the Part 150 documentation and has the potential for unjust discrimination. Program Elements A.8.a., and C.4.b. were disapproved because they request actions of FAA personnel which are beyond the scope of FAA involvement.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on April 29, 1988. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Snohomish County Airport.

Issued in Seattle, Washington on June 1, 1988.

Thomas J. Howard,

Acting Regional Director, Northwest Mountain Region.

[FR Doc. 88-14173 Filed 6-22-88; 8:45 am]

BILLING CODE 4910-13-M

Artisan Liens on Aircraft; Recordability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice of legal opinion is issued by Aeronautical Center Counsel to provide legal advice to the Aircraft Registration Branch, Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma, also identified as the FAA Aircraft Registry. Since December 17, 1981, Aeronautical Center Counsel has issued opinions in the **Federal Register** of those states from which artisan liens will be accepted for recordation by the FAA Aircraft Registry. This opinion is to advise interested parties of the addition of the State of Missouri to that list.

DATES: June 23, 1988.

ADDRESSES: Copies of prior opinions on the recordability of artisan liens from states which have statutes authorizing their recording may be obtained from: Aeronautical Center Counsel, AAC-7, P.O. Box 25082, Oklahoma City, OK 73125.

FOR FURTHER INFORMATION CONTACT: R. Bruce Carter, Office of Aeronautical Center Counsel, address above, or by calling 405-686-2296 (FTS 747-2296.)

SUPPLEMENTARY INFORMATION: In the December 17, 1981, **Federal Register**, Vol. 46, No. 242, page 61528, the Federal Aviation Administration, Mike Monroney Aeronautical Center, published its legal opinion on the recordability of artisan liens, with the identification of those states from which artisan liens would be accepted. In the April 23, 1984, **Federal Register**, Vol. 49, No. 79, page 17112, we advised that Florida, Nevada and New Jersey had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In the June 10, 1986, **Federal Register**, Vol. 51, No. 111, page 21046, we advised that Minnesota and New Mexico had passed legislation which, in our opinion, allow the Aircraft Registry to accept artisan liens from those states.

The purpose of this opinion is to advise interested parties in the aviation community that in addition to those states identified in the June 10, 1986, publication, Missouri is identified as a state from which artisan liens will be accepted.

The complete list of states from which artisan liens on aircraft will be accepted as of this date are:

Alaska	Nebraska
Arkansas	Nevada
Florida	New Jersey
Georgia	New Mexico
Illinois	Oklahoma
Indiana	Oregon
Kansas	South Carolina
Kentucky	South Dakota
Maine	Virgin Islands
Minnesota	Washington
Missouri	Wyoming

Issued in Oklahoma City, on May 6, 1988.

Joseph R. Standell,

Aeronautical Center Counsel.

[FR Doc. 88-14174 Filed 6-22-88; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-88-24]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before July 11, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 13, 1988.

Deborah E. Swank,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
12227	National Business Aircraft Association, Inc.	14 CFR 91.169 and 91.191(a)	To extend Exemption No. 1637, as amended, that allows petitioner's members to use inspection programs required for large turbojet or turboprop-powered airplanes for their small civil airplanes and helicopters. The exemption also allows operation of their aircraft under Subpart D of Part 91.
24941	The Perris Valley Skydiving Center	14 CFR 105.43	To allow foreign parachutists to participate in the petitioner's parachute jumps without complying with the parachute equipment and packing requirements of § 105.43.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
25602	Trans World Airlines, Inc	14 CFR 121.360	To allow petitioner to operate six Lockheed L-1011-385-1-15 airplanes for an indefinite period of time with a ground proximity warning system that utilizes the U.K. Civil Aviation Authority certification requirements instead of complying with the requirements of Technical Standard Order C926.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
23869	Strong Enterprises, Inc./The Relative Workshop, Inc..	14 CFR 105.43(a)	To extend Exemption No. 4047, as amended, that allows petitioners' employees and representatives and other volunteer experimental parachute test jumpers under their direction and control to make tandem parachute jumps and to permit pilots in command of aircraft involved in these operations to allow such persons to make parachute jumps wearing a dual harness, dual parachute pack having at least one main parachute and one approved auxiliary parachute packed in accordance with § 105.43(a). *GRANT, June 9, 1988, Exemption No. 4943.*
25060	Douglas Aircraft Company	14 CFR 21.197	To allow petitioner to conduct crew training on an aircraft operating under a special flight permit. *GRANT, May 27, 1988, Exemption No. 4936.*
25247	40-Mile Air, Ltd	14 CFR 43.3(g)	To allow those pilots employed by petitioner, a Part 135 operator, to perform certain preventive maintenance operations, as listed under Appendix A of Part 43, on aircraft operated by petitioner and also to approve these aircraft for return to service following these operations. *DENIAL, June 1, 1988, Exemption No. 4944.*
25446	Columbia Helicopters, Inc	14 CFR 91.169(a)	To allow petitioner to operate Boeing helicopter model 234LR, S/N MJ-001, N234CH, under the operating rules of Parts 91 and 133 to fight forest fires, and for heavy lift operations, instead of the operating rules of Part 135. GRANT, June 7, 1988, Exemption No. 4942.
25512	Ameriflight, Inc	14 CFR 135.225 (a) and (b)	To allow petitioner's pilots to begin instrument approach procedures to airports without an approved weather reporting facility and without the latest weather report indicating that weather conditions are at or above the authorized IFR landing minimums for that airport. In addition, to allow petitioner's pilots to begin the final approach segment of an instrument approach procedure to an airport without the latest weather report indicating that the weather conditions are at or above the authorized IFR landing minimums for that procedure. *DENIAL, June 8, 1988, Exemption No. 4945.*
016NM	Trans World Airlines, Inc	14 CFR 25.1303(c)(1)	To permit operation of six Lockheed Model L-1011-385-1-15 airplanes, with an overspeed warning tolerance 6 knots greater than allowed by the FAR. *GRANT, June 1, 1988, Exemption No. 4937.*

[FR Doc. 88-14175 Filed 6-22-88; 8:45 am]
BILLING CODE 4910-13-M

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption; Correction

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for renewal or modification of exemptions or application to become a party to an exemption; correction.

SUMMARY: This document corrects a notice published in the **Federal Register** on Tuesday, June 14, 1988 on page 22260. The application number 9609 should have been 6569; application number 9914 should have been 9941.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-14142 Filed 6-22-88; 8:45 am]
BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 121
Thursday, June 23, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting was held at the offices of the Farm Credit Administration McLean, Virginia, on June 17, 1988, from 10:00 a.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was closed to the public. The matters considered at the meeting were.

1. Mergers of the Farm Credit System Federal Land Banks and Federal Intermediate Credit Banks; and

2. The Federal Land Bank of Jackson, in receivership, and the Federal Land Bank Association of Jackson, in receivership.

Dated: June 20, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (6), (8) and (9).

[FR Doc. 88-14244 Filed 6-21-88; 9:24 am]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:03 p.m., on Friday, June 17, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: June 20, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-14243 Filed 6-21-88; 9:23 am]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

[No. 88-13755]

PREVIOUSLY ANNOUNCED DATE AND TIM

Thursday, June 23, 1988, 10:00 a.m.

THE FOLLOWING ITEM WAS ADDED TO T

AGENDA: Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding—Revised 1988.

* * * * *

DATE AND TIME: Tuesday, June 28, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, June 30, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC, (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.

Correction and Approval of Minutes.

Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 88-14321 Filed 6-21-88; 2:43 pm]

BILLING CODE 6715-01-M

federal register

Thursday
June 23, 1988

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 3830, 3850, and 3860
Location of Mining Claims; Amendment Establishing Service Charges and Making Clarifications; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3830, 3850, and 3860

[AA-680-08-4310]

Location of Mining Claims; Amendment Establishing Service Charges and Making Clarifications

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend 43 CFR Subpart 3833 to modify the service charges for the recordation of mining claims and establish new service charges for the filing of ancillary documents, to simplify the existing regulations by removing certain provisions, and to clarify ambiguous terms, making the regulations easier to understand and use. It would also amend 43 CFR Part 3852 to modify the service charge for filing a petition for a deferment of assessment work and amend 43 CFR Part 3862 to modify the service charge for a mineral patent application.

DATE: Comments should be submitted by August 22, 1988. Comments received or postmarked after the above date may not be considered as part of the decision making process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Roger Haskins, (202) 343-8537.

SUPPLEMENTARY INFORMATION: This proposed rulemaking would amend the existing regulations in 43 CFR Subpart 3833 Recordation of Mining Claims. The proposed rulemaking would increase the service charge for the initial filing with the Bureau of Land Management of each lode claim, placer claim, mill site, and tunnel site and establish new service charges for filing ancillary documents. Other changes made by the proposed rulemaking would clarify ambiguous terms, remove the requirement for diligent searches by the Bureau of Land Management, make nonpayment of fees a cause for rejection after June 1, 1989, and reformat the existing regulations for easier comprehension and use by the public. This proposed rulemaking would also amend 43 CFR Subparts 3852 and 3862 to increase the service charges for filing a petition for deferment of assessment work and for the filing of a mineral patent application.

The primary action of the proposed rulemaking would raise the recording service charge imposed on mining claimants when they initially record a mining claim or site with the Bureau of Land Management and establish new service charges for the filing of annual filings, amendments to location, and transfers of interest. The General Accounting Office in a report entitled *Public Lands—Interior Should Recover Costs of Recording Mining* Claims, GAO/RCED-86-217, September 1986, criticized the Bureau for not charging a mining claim recordation fee large enough to recover the Bureau's cost of administering the program. The Bureau, as required by Title V of the Independent Offices Appropriation Act (31 U.S.C. 9701), has examined the fees charged in the mining law administration program. Under the mining law, a citizen is entitled to locate a claim and then to explore for minerals and to develop any valuable deposits which are discovered. In order to obtain these benefits, a claimant must properly maintain the claim by, among other things, complying with the recordation and annual filing requirements of section 314 of the Federal Land Policy and Management Act of 1976 (FLMPA).

The Bureau has concluded that the proposed fees are necessary to put the mining law administration program on a cost-recovery basis as mandated by Title V and urged by the comptroller General and the Congress. The proposed fees will not recover all costs associated with the program but only those costs which the Bureau has concluded result from a citizen locating, maintaining and operating a mining claim.

The Bureau of Land Management's review of the existing regulations indicated a need to clarify the terms "relocation" and "amended location" because of the confusion among mining claimants on which of these terms should be used when recording their mining claims with the Bureau. The use of the wrong term could result in unintended consequences. The proposed rulemaking clarifies the definition of these terms and is based on recent published decisions of the Department on these issues.

The proposed rulemaking would amend § 3833.2-1 which deals with mining claims, mill sites, and tunnel sites in units of the National Park System to reflect the fact that claims or sites cannot be located in such units and there is no need for authority concerning the recordation of such claims or sites.

Section 2833.5(d) of the existing regulations would be amended to remove the requirement that the Bureau of Land Management diligently search out the whereabouts of a mining claimant prior to taking adverse action against his/her mining claim. The United States Court of Appeals for the Tenth Circuit held that the government need only search the records filed under Section 314 in order to identify the owner of a mining claim, mill site, or tunnel site in order to initiate a proper contest. *Topaz Beryllium Co.* v. *United States* (649 F.2d 775, 779 (1981)). In 1981, the Bureau did not believe that its records under section 314 were complete enough for this purpose. Now, however, the Bureau's records are sufficiently organized, and the public has had sufficient experience under section 314, to implement the court's holding on the regulations.

Additional changes would be made by the propose rulemaking to make its provisions easier to understand.

The Bureau also proposed to increase its service charges, last set in 1954, for the filing of a petition for the deferment of assessment work under § 3852.2 (30 U.S.C. 28b) and for the filing of a mineral patent application under § 3862.1-2 (30 U.S.C. 29). These service charges will change from $10 to $50 for each petition for deferment of assessment work and from $25 to $250 for each mineral patent application and the first mining claim or site within it, and an additional $50 for each additional mining claim or site contained within the application. The increased service charges will defray the Bureau's docketing and initial processing costs associated with these particular services, which are not necessarily benefits associated with all mining claims.

The principal author of this proposed rulemaking is Roger Haskins, Division of Mining Law and Salable Minerals, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a signficiant economic effect on a substantial number

of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The principal changes that would be made by this proposed rulemaking, an increase of $5 in the mining claim and site recording fee and establishing of new services charges of $5 each for an annual filing, a transfer of interest, and an amendment to a notice or certificate of location, increasing the $10 charge to $50 for each petition for deferment; and increasing the charge for each mineral patent application from $25 to $250 plus $50 for each additional mining claim or site in the mineral patent application, are required to meet the statutory mandate that the Bureau of Land Management charge a reasonable fee for the services it provides the public. The economic effect of the increase in the fees will be equally applicable to any entity, whatever its size, or any individual that files and maintains a mining claim or site for recordation with the Bureau. The other changes will have no significant economic effect on those using the regulations.

The information collection requirements contained in 43 CFR Part 3833 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0114.

List of Subjects for 43 CFR Parts 3830, 3850 and 3860

Mineral royalties, Mines, Public lands—mineral resources, Reporting and record keeping requirements.

Under the authority of the General Mining Law of May 10, 1872 (30 U.S.C. 22), section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), the Act of August 31, 1951 (31 U.S.C. 9701), and sections 304, 310, and 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734, 1740, 1744), it is proposed to amend Subpart 3833, Part 3800, Group 3800, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3830—[AMENDED]

1. The authority citation for Part 3830 is added to read:

Authority: 30 U.S.C. 22, sections 2319 and 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), 31 U.S.C. 9701, 16 U.S.C. 1901, 1907, and 43 U.S.C. 1734, 1740, 1744, and 1782.

§ 3833.0–3 [Amended]

2. Section 3833.0–3(d) is amended by removing the citation "(31 U.S.C. 483a)" and replacing it with the citation "(31 U.S.C. 9701)".

§ 3833.0–5 [Amended]

3. Section 3833.0–5 is amended by:

A. Revising paragraph (j) to read:

(j) "Affidavit of assessment work" means the instrument required under state law that certifies that assessment work required by 30 U.S.C. 28 has been performed on, or for the benefit of, a mining claim or, if state law does not require the filing of such an instrument, an affidavit evidencing the performance of such assessment work; and

B. Adding new paragraphs (p), (q), and (r) to read:

(p) "Amended notice or certificate of location" means an instrument that corrects or clarifies defects or omissions in the original notice or certificate of location. An "amended notice of location" shall not add additional lands to an existing claim or site. Correctable defects or omissions are changes in the legal description, ownership, mining claim name, position of discovery or boundary monuments, and similar items. An amended location notice relates back to the original location notice date. No amendment is possible if the original location is void.

(q) "Relocation" means the establishment of a new mining claim, mill site, or tunnel site which is adverse to any former location on the same lands. A relocation may not be established by the use of an "amended location notice", but requires a new original location notice or certificate as prescribed by state law.

(r) "Annual filing" means either an affidavit of assessment work or a notice of intention to hold the mining claim, mill site, or tunnel site.

4. Section 3833.1–1 is amended by:

A. Revising the title to read:

§ 3833.1–1 Recordation of mining claims, mill sites and tunnel sites located on or before October 20, 1976.

B. By adding the figure "(a)" at the beginning of the existing paragraph in that section; and

C. Adding a new paragraph (b) to read:

(b) No unit of the National Park System remained open to mining claim location after September 28, 1976. All mining claims, mill sites, and tunnel sites located in a unit of the National Park System on that date were required to be recorded with the National Park Service on or before September 28, 1977, or they were, by operation of law, deemed conclusively to be abandoned and void.

5. Section 3833.1–3 is revised to read:

§ 3833.1–3 Service charges.

Each mining claim, mill site, or tunnel site filed for recordation shall be accompanied by a nonrefundable service charge of $10. Each annual filing submitted pursuant to § 3833.2 shall be accompanied by a service charge of $5 for each mining claim, mill site, or tunnel site listed in the annual filing. Each amendment to a previously recorded notice or certificate of location shall be accompanied by a service charge of $5. Each transfer of interest filed pursuant to § 3833.3 shall be accompanied by a service charge of $5. Prior to June 1, 1989, if any of the above described documents are not accompanied by the required service charge, they will be noted as being recorded or filed on the date received if, upon notification by the authorized officer, the claimant submits the proper service charge within 30 days of the receipt of the certified notification to submit the proper service charge. Failure to submit the proper service charge within the 30 days shall cause the recordation, annual filing, transfer, or amendment to be rejected by the authorized officer. Effective on June 1, 1989, the failure to submit the proper service charge with any document in this Subpart shall cause the document to be rejected by the authorized officer.

6. Revise § 3833.2 to read:

§ 3833.2 Annual filings.

7. Section 3833.2–1 is revised to read:

§ 3833.2–1 National Park System lands.

(a) For all mining claims, mill sites, and tunnel sites located within a unit of the National Park System that was recorded on or before September 28, 1977, an annual filing shall be submitted to the proper BLM office on or before December 30 of each succeeding calendar year thereafter.

(b) The provisions of this section shall apply to all mining claims, mill sites, and tunnel sites included in a unit of the National Park System because of an enlargement of the said unit after September 28, 1976. Such claims and sites were subject to recordation under the provisions of §§ 3833.1–1(a) or 3833.1–2 of this title, as applicable.

(c) Evidence of annual assessment work for mining claims, mill sites, and tunnel sites located in a unit of the National Park System shall be in the form prescribed by § 3833.2–4 of this Title. A notice of intention to hold such a claim or site shall be in the form prescribed in § 3833.2–5 of this Title.

(d) The authorized officer shall forward copies of annual filings on mining claims, mill sites, and tunnel sites located within a unit of the National Park System to the proper National Park Service office.

§§ 3833.2–2, 3833.2–3, 3833.2–4 [Redesignate as §§ 3833.2–4, 3833.2–5, 3833.2–6]

8. Redesignate §§ 3833.2–2, 3833.2–3, 3833.2–4 as §§ 3833.2–4, 3833.2–5, and 3833.2–6, respectively.

9. New §§ 3833.2–2 and 3833.2–3 are added to read:

§ 3833.2–2 Other Federal lands.

Unpatented mining claims, mill sites, and tunnel sites located on Federal lands which are not within a unit of the National Park System are subject to the following annual filing requirements:

(a) If a mining claim, mill site, or tunnel site located on or before October 20, 1976, was recorded in the proper BLM office prior to January 1, 1978, a notice of intention to hold or evidence of annual assessment work shall be filed in the proper BLM office on or before December 30, of the calendar year following the calendar year of its recordation, and of each calendar year thereafter.

(b) All owners of mining claims, mill sites, or tunnel sites located on or before October 20, 1976, and recorded in the proper BLM office between January 1, 1978, and October 22, 1979, shall have filed a notice of intention to hold or evidence of annual assessment work in the proper BLM office on or before October 22, 1979, and on or before December 30 of each calendar year after 1979.

(c) Owners of mining claims, mill sites, and tunnel sites located on or after October 21, 1976, shall file a notice of intention to hold or evidence of annual assessment work in the proper BLM office on or before December 30 of the calendar year following the calendar year of the location of the mining claims, mill site, or tunnel site.

(d) Evidence of annual assessment work shall be in the form prescribed in § 3833.2–4 of this Title. A notice of intention to hold shall be in the form prescribed in § 3833.2–5 of this Title.

§ 3833.2–3 Consistency between the Federal Land Policy and Management Act and the General Mining Law of May 10, 1872.

(a) The Federal Land Policy and Management Act requires that a notice of intention to hold or evidence of annual assessment work be filed on or before December 30 of each calendar year following the calendar year in which the mining claim, mill site, or tunnel site was located. To comply with the requirements of the Act for mining claims, mill sites, or tunnels sites located between September 1 and December 31 of a given calendar year, the claimant shall submit an annual filing on or before December 30, of the following calendar year for each location to prevent the mining claim, mill site, or tunnel site from being declared abandoned and void by operation of law.

(b) Evidence of assessment work filed under this subpart between January 1 and the following December 30 of the same calendar year shall be deemed to have been filed during that calendar year, regardless of what assessment year that work fulfilled under State law.

(c) Notice of intention to hold a mining claims, mill site, or tunnel site may be filed at the election of the owner, regardless of whether the assessment work has been suspended, deferred, or not yet accrued. However, the owner shall have filed with the Bureau of Land Management the same documents which have been or will be recorded with the local recordation office. A notice of intention to hold a mining claim, mill site, or tunnel site shall be effective only to satisfy the filing requirement for the calendar year in which the notice is filed. The filing of a notice of intention to hold with the Bureau of Land Management shall not relieve the owner of complying with Federal and State laws pertaining to the performance of assessment work.

§ 3833.4 [Amended]

11. Section 3833.4(b) is amended by removing the phrase "§§ 3833.1–2(b), 3833.2–1(c), 3833.2–2(a) and (b), or 3833.2–3(b) and (c)" and replacing it with the phrase "§ 3833.2–4 (a) and (b), 3833.2–5 (a) and (b), and 3833.3", and by removing the second and third sentence of the paragraph and adding a new sentence to read "Failure to file the information requested by the decision of the authorized officer shall result in the mining claim, mill site, or tunnel site being deemed conclusively to be abandoned and it shall be void."

§ 3833.5 [Amended]

12. Section 3833.5 is amended by:

A. Amending paragraph (d) by removing everything after the first sentence of the paragraph and replacing it with "As provided in Subpart 1810 of this Title, all owners of record with the Bureau of Land Management shall be personally notified and served by certified mail, return receipt requested, sent to their last address of record. Such owners shall be deemed to have been served if the certified mail was delivered to that address of record, regardless of whether the certified mail was in fact received by them. The provisions of this Subpart shall not be applicable to procedures for public notice required under part 3860 of this Title with respect to mineral patent applications."; and

B. By adding a new paragraph (h) to read:

* * * * *

(h) Any party adversely affected by a decision of the authorized officer made pursuant to the provisions of this Subpart shall have a right of appeal pursuant to Part 4 of this Title.

PART 3850—ASSESSMENT WORK

1. An authority citation is added to read:

Authority: 30 U.S.C. 22 et seq.

Subpart 3852—Deferment of Assessment Work

§ 3852.2 [Amended]

2. The last sentence of § 3852.2(a) is revised to read:

(a) * * * Each petition shall be accompanied by a $50 nonrefundable service charge.

* * * * *

PART 3860—MINERAL PATENT APPLICATIONS

1. An authority citation is added to read:

Authority: 30 U.S.C. 22 et seq.

Subpart 3862—Lode Mining Claim Patent Applications

2. Section 3862.1–2 is revised to read:

§ 3862.1–2 Service charge.

Each Mineral Patent Application shall be accompanied by a nonrefundable service charge of $250 per application and the initial mining claim or site plus $50 for each additional mining claim or site contained within the application.

J. Steven Griles,

Assistant Secretary of the Interior.

June 6, 1988.

[FR Doc. 88–14200 Filed 6–22–88; 8:45 am]

BILLING CODE 4310–84–M

federal register

Thursday
June 23, 1988

Part III

Department of Education

Office of Postsecondary Education

34 CFR Part 642

Training Program for Special Programs Staff and Leadership Personnel; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR Part 642

Training Program for Special Programs Staff and Leadership Personnel

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Training Program for Special Programs Staff and Leadership Personnel. The proposed amendments incorporate legislative changes, establish Secretarial priorities, and place limits on the number of applications an applicant may submit under this program.

DATE: Comments must be received on or before July 25, 1988.

ADDRESSEE: All comments concerning these proposed regulations should be addressed to Dr. Daniel B. Davis, Director, Division of Student Services, (Room 3060, ROB #3) U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Jowava M. Leggett, Telephone: (202) 732–4804.

SUPPLEMENTARY INFORMATION:

Background

The Training Program for Special Programs Staff and Leadership Personnel is authorized under Title IV–A–4, of the Higher Education Act of 1965, as amended (HEA). Its purpose is to improve the operations of the Special Programs for Students from Disadvantaged Backgrounds (Student Support Services, Upward Bound, Talent Search, Educational Opportunity Centers, and the Ronald E. McNair Post-Baccalaureate Achievement Program) by providing project staff and leadership personnel with training in carrying out project activities.

Explanation of Changes

The Secretary proposes to amend the regulations to conform them to the statute as amended by the Higher Education Amendments of 1986 and to make other changes to improve the administration of the program. These changes include:

- Adding "the publication of manuals designed to improve the operations of Special Programs" to the list of allowable activities as authorized by the 1986 amendments.
- Adding a list of topics from which the Secretary may select annual priorities. The Secretary announces the priorities for a competition in the application notice published annually in the Federal Register. This change, which deletes the need to publish a separate notice of proposed priorities for each Training Program competition, will allow the Secretary to award grants earlier in the fiscal year.
- Restricting the number of applications an applicant can submit on a single priority or topic. This change will increase the competitiveness of the program and reduce the administrative burden and cost of the program.

Implementation of Changes

These amendments do not apply to the fiscal year 1988 competition, which will be based on the current Training Program regulations. These amended regulations will not be utilized to evaluate competitive Training Program applications until fiscal year 1990.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by these regulations are small institutions of higher education and small non-profit organizations. These regulations describe the program and establish minimal application requirements. They will not have a significant economic impact on the institutions and organizations affected.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3060, Regional Office Building #3, 7th and D Streets, SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information gathered by or available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 642

Education, Education of disadvantaged, Education of handicapped. Grants programs, Training.

(Catalog of Federal Domestic Assistance Number 84.103—Training Program for Special Programs Staff and Leadership Personnel)

Dated: May 17, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part 642 of Title 34 of the Code of Federal Regulations as follows:

PART 642—TRAINING PROGRAM FOR SPECIAL PROGRAMS STAFF AND LEADERSHIP PERSONNEL

1. The authority citation for Part 642 is revised to read as follows:

Authority: 20 U.S.C.1070d–1d, unless otherwise noted.

2. In § 642.5, the definition of "Special Programs" and the authority citation following the definition in paragraph (b) are revised to read as follows:

§ 642.5 Definitions that apply to the Training Program.

* * * * *

(b) * * *

"Special Programs" means the Upward Bound, Talent Search, Student Support Services, Educational Opportunity Centers, and Ronald E. McNair Post-Baccalaureate Achievement Programs.

(Authority: 20 U.S.C. 1070d–1d)

3. Section 642.6 is added in Subpart A to read as follows:

§ 642.6 What is the allowable number of applications?

An applicant may submit only one application for—

(a) Each priority the Secretary announces under § 642.34(a); and

(b) Each significant training need addressed under § 642.34(b).

(Authority: 20 U.S.C. 1070d–1d)

4. In § 642.10, paragraph (b) and the authority citation are revised to read as follows:

§ 642.10 Activities the Secretary assists under the Training Program.

* * * * *

(b) The grants may provide support for conferences, seminars, internships, workshops, and the publication of manuals designed to improve the operations of the Special Programs.

(Authority: 20 U.S.C. 1070–1d)

5. Section 642.34 is revised to read as follows:

§ 624.34 Priorities for funding.

(a) The Secretary, after consultation with regional and State professional associations of persons having special knowledge with respect to the training needs of Special Programs personnel, may select one or more of the following subjects as training priorities:

(1) Basic skills instruction in reading, mathematics, written and oral communication, and study skills.

(2) Counseling.

(3) Assessment of student needs.

(4) Academic tests and testing.

(5) College and university admissions policies and procedures.

(6) Student financial aid.

(7) Cultural enrichment programs.

(8) Career planning.

(9) Tutorial programs.

(10) Retention and graduation strategies.

(11) Support services for persons of limited proficiency in English.

(12) Support services for physically handicapped persons.

(13) Strategies for preparing students for doctoral studies.

(14) Project evaluation.

(15) Budget management.

(16) Personnel management.

(17) Reporting student and project performance.

(18) Coordinating project activities with other available resources and activities.

(19) General project management for new directors.

(b) The Secretary may consider an application for a Training Program project that does not address one of the established priorities if the applicant addresses another significant training need in the local area being served by the Special Programs.

(Authority: 20 U.S.C. 1070d, 1070d–1d)

[FR Doc. 88–14196 Filed 6–22–88; 8:45 am]

BILLING CODE 4000–01–M

Federal Register

Thursday
June 23, 1988

Part IV

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 5

Miscellaneous Amendments of Patent Rules; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 5

[Docket No. 70754-8056]

Miscellaneous Amendments of Patent Rules

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office is amending its rules of practice in patent cases, Parts 1 and 5 of Title 37, Code of Federal Regulations, (1) to bring the rule relating to swearing back of a reference into conformity with current interference practice; (2) to require that the appellant's brief in an *ex parte* appeal contain certain specific items; (3) to reset the time period for requesting an oral hearing in *ex parte* appeals where the examiner's answer states a new ground of rejection; (4) to clarify the procedure following a rejection after a remand to the examiner under § 1.196(b)(1); (5) to give the examiner-in-chief the authority to decide certain requests for access by an interference party; (6) to clarify the rule relating to access to pending or abandoned applications; (7) to modify the rules concerning requests for interference with an application or patent; (8) to amplify the rule concerning the requirements of a motion to declare an additional interference; (9) to make more comprehensive the rule concerning the filing of a reissue application by a patentee involved in an interference; and (10) to conform the rule concerning applications under secrecy order to current interference practice.

EFFECTIVE DATE: September 12, 1988. Amended §§ 1.191, 1.192 and 1.193 apply to *ex parte* appeals in which the notice of appeal under § 1.191 was filed on or after September 12, 1988.

FOR FURTHER INFORMATION CONTACT: Saul I. Serota by telephone at (703) 557–4072 or Ian A. Calvert by telephone at (703) 557–4000 or by mail marked to the attention of either and addressed to Box Interference, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking was published in the **Federal Register** at 52 FR 36736–36743 (September 30, 1987) and at 1083 *Official Gazette* 19–26 (October 13, 1987).

An oral hearing was held on December 9, 1987. Twenty-nine written comments were received, and four persons testified at the oral hearing. Responses to these comments are incorporated in the following discussion of specific rules.

Discussion of Specific Rules

(1) Swearing Back of a Reference

The Patent and Trademark Office published the final rule amending the rules of practice in patent interference cases in the **Federal Register** at 49 FR 48416–48471 (December 12, 1984) and at 1050 *Official Gazette* 385–440 (January 29, 1985). Included in the rules adopted was § 1.601(n), which defines "same patentable invention."

Section 1.131(a), as amended, inserts "the same patentable invention, as defined in § 1.601(n) as" before the phrase "the rejected invention." The amendment does not change the present practice where the inventor of the rejected claim, the owner of a patent under reexamination, or the person qualified under §§ 1.42, 1.43 or 1.47 can swear behind a domestic patent which discloses but does not claim the same invention as the rejected invention, a foreign patent or a printed publication. Rather, the amendment is necessary to define precisely the term "does not claim the rejected invention." See *In re Eickmeyer*, 602 F.2d 974, 979, 202 USPQ 655, 661 (CCPA 1979) where the Court stated:

> * * * we conclude that the phrase "does not claim the rejected invention" should be construed favorably to an applicant, if possible, so that unless the applicant is clearly *claiming the same invention* as the U.S. patent reference, he will not lose his rights under Rule 131. [Emphasis added.]

and also expressed its dissatisfaction with the PTO for

> * * * leaving an applicant in a position where he cannot overcome the reference claims by a 131 affidavit because the PTO has decided that the reference claims his invention, while at the same time, he is denied an interference because the PTO has decided that the claims of his application and those of the reference are not for substantially the same invention.

Possibly because of this decision, some patent practitioners may have been of the opinion that an affidavit under 37 CFR 1.131 can be used to overcome a rejection on a domestic patent so long as there is no verbatim correspondence between the claims of the application or the patent under reexamination rejected on that domestic patent and the claims of the domestic patent.

Such an opinion would not be in accord with the law expressed in cases such as *In re Clark*, 457 F.2d 1004, 173 USPQ 359 (CCPA 1972); *In re Hidy*, 303 F.2d 954, 133 USPQ 650 (CCPA 1962); *In re Teague*, 254 F.2d 145, 117 USPQ 284 (CCPA 1958); and *In re Ward*, 236 F.2d 428, 111 USPQ 101 (CCPA 1956). In *In re Hidy, supra*, 303 F.2d at 957, 133 USPQ at 652, the Court stated:

> A Rule 131 affidavit is ineffective to overcome a United States patent, not only where there is a verbatim correspondence between claims of the application and of the patent, but also where there is no patentable distinction between the respective claims. *In re Wagenhorst*, 20 CCPA 829, 62 F.2d 831, 16 USPQ 126; *In re Teague*, 45 CCPA 877, 254 F.2d 145, 117 USPQ 284.

If the application (or patent under reexamination) and the domestic patent contain claims which are identical, or which are not patentably distinct, then the application and patent are claiming the "same patentable invention," defined by § 1.601(n) as follows:

> Invention "A" is the "same patentable invention" as an invention "B" when invention "A" is the same as (35 U.S.C. 102) or is obvious (35 U.S.C. 103) in view of invention "B" assuming invention "B" is prior art with respect to invention "A".

As provided in § 1.601(i), an interference may be declared whenever an examiner is of the opinion that an application and a patent contain claims for the "same patentable invention." The purpose of the amendment to § 1.131(a) is to ensure that an applicant who is claiming an invention which is identical to, or obvious in view of, i.e., the same patentable invention as claimed in a domestic patent, cannot employ an affidavit under § 1.131 as a means for avoiding an interference with the patent. To allow an applicant to do so would result in the issuance of two patents to the same invention.

Two commenters suggested that § 1.131 be amended to require that an interference be declared if an affidavit or declaration under the rule cannot be used; another suggested that the examiner be required to consider the § 1.131 affidavit or declaration if an interference is not declared. These suggestions are not being adopted. As discussed above, an affidavit or declaration under § 1.131 may be used whenever the inventions claimed by the reference patent (not a statutory bar) and the application would not interfere. However, the rule could not properly be amended to require that an interference always be declared if the patent and application claims interfere, because even if the claims interfere an interference will not be declared unless the applicant first meets the requirements of 37 CFR 1.608 (a) or (b). Section 1.608(b) requires an applicant whose showing is based on priority of

invention to file affidavits by "one or more corroborating witnesses," whereas § 1.131 does not. Compare *Kistler v. Weber*, 412 F2.d 280, 162 USPQ 214 (CCPA 1969).

One commenter asserted that an applicant should be able to "pursue the swearing back of a reference while not restricting the PTO in declaring an interference." However, the PTO is not restricted from declaring an interference if an affidavit or declaration under § 1.131 is filed. The purpose of the rule change is to more clearly define when such an affidavit or declaration can be used.

Section 1.131(b), as amended, inserts in the first sentence thereof the language, "prior to" before the words "said date." This amendment makes clear that the showing of facts under § 1.131(b) must establish due diligence from a date prior to the effective date of the reference to affiant's subsequent reduction to practice or to the filing of his application as set forth in *In re Mulder*, 716 F.2d 1542, 219 USPQ 189 (Fed. Cir. 1983).

(2) Appellant's Brief and Reply Brief

A. Limitation on Length

The proposed limitations on briefs and reply briefs to 30 and 15 pages, respectively, together with the proposal that non-complying briefs and reply briefs be returned to the appellant, are not being adopted, in view of the overwhelming opposition of the majority of the commenters. While the PTO is still concerned about the filing of excessively lengthy briefs, it is hoped that the effect of the proposed rules in focusing the attention of the patent bar on this issue, together with the newly-adopted requirements of § 1.192(c), will help to alleviate the problem.

B. Contents of the Main Brief

Section 1.192, as amended, adds paragraphs (c) and (d). Paragraph (c) remains as proposed, except that item (5) has been revised and the title of item (7) has been changed. The first sentence of proposed paragraph (d) has been rewritten in response to numerous comments to the effect that dismissal of the appeal for failure to include any of the items required by paragraph (c), in the order specified in paragraph (c), would be too harsh a penalty.

Paragraph (c) requires that the brief contain, in order, seven specific items. This requirement arose from the recommendations of a committee which was appointed by the Commissioner of Patents and Trademarks in 1986 to study and report on alternatives for reducing the backlog of *ex parte* appeals at the Board of Patent Appeals and Interferences (Board). One of the committee's recommendations was that § 1.192 be amended to require that the appellant's brief include certain items. Items (3), (4), (5) and (6) of § 1.192(c) are based upon the committee's recommendations. The committee indicated that the inclusion of those items in the brief would crystallize the issues involved in the appeal. By eliminating inadequate briefs, the Board will not need to engage in what might be called "*de novo*" examination of a patent application, but rather can confine its activities to review of the appealed rejections.

The committee also recommended that certain items be required to be included in the examiner's answer. The *Manual of Patent Examining Procedure* will be amended to require that the examiner's answer contain these and other items, substantially as indicated in Appendix A.

In addition to the committee's recommendations, some of the items are supported by the evaluation of selected practices conducted as a part of the PTO's Quality Reinforcement Program. A summary of the results of that evaluation is published at 1078 *Official Gazette* 22 (May 19, 1987).

The specific items required by § 1.192(c) are:

(1) A statement of the status of all the claims in the application, or patent under reexamination, i.e., for each claim in the case, appellant should state whether it is cancelled, allowed, rejected, etc. Each claim on appeal must be identified.

(2) A statement of the status of any amendment filed subsequent to final rejection, i.e., whether or not the amendment has been acted upon by the examiner, and if so, whether it was entered, denied entry, or entered in part. In response to one comment, it is noted that this statement will of course be of the status of the amendment as understood by the appellant.

Items (1) and (2) are included in § 1.192(c) because in the past confusion has sometimes arisen as to which claims are on appeal, and the precise wording of those claims, particularly where the appellant has sought to amend claims after final rejection. The inclusion of items (1) and (2) in the brief will advise the examiner of what the appellant considers the status of the claims and post-final rejection amendments to be, allowing any disagreement on these questions to be resolved before the appeal is taken up for decision by the Board.

(3) A concise explanation of the invention defined in the claims involved in the appeal. This explanation is required to refer to the specification by page and line number, and, if there is a drawing, to the drawing by reference characters. Where applicable, it would be preferable to read the appealed claims on the specification and any drawing.

Two commenters felt that the requirement that the specification be referred to by page and line should be optional; another, that referring to the specification and drawings might limit the claims; and others, that reference to page and line of the specification would make the explanation less concise. Nevertheless, while reference to page and line of the specification may require somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. Since the claims are read in light of the disclosure, it is not apparent how compliance with this requirement would limit the claims.

(4) A concise statement of the issues presented for review. Each stated issue should correspond to a separate ground of rejection which appellant wishes the Board to review. While the statement of the issues must be concise, it should not be so concise as to omit the basis of each issue. For example, the statement of an issue as "Whether claims 1 and 2 are unpatentable" would not comply with § 1.192(c)(4). Rather, the basis of the alleged unpatentability must be stated, e.g., "Whether claims 1 and 2 are unpatentable under 35 U.S.C. 103 over Smith in view of Jones," or "Whether claims 1 and 2 are unpatentable under 35 U.S.C. 112, first paragraph, as being based on a non-enabling disclosure." The statement should be limited to the issues presented, and should not include any argument concerning the merits of those issues.

Two commenters suggested that the term "issues" in § 1.192(c)(4) be replaced by "rejections," as being more in agreement with the explanation in the preceding paragraph. However, the term "issues" is considered preferable, because some rejections may encompass multiple issues. For example, a rejection for failure to comply with 35 U.S.C. 112, first paragraph, might include the issues of no written description, nonenabling disclosure, and lack of best mode. Specifying each of these as a separate issue would be more informative than including them all in a single statement of the rejection.

(5) If an appealed ground of rejection applies to more than one claim and appellant considers the rejected claims

to be separately patentable, § 1.192(c)(5) requires appellant to state that the claims do not stand or fall together, and to present in the appropriate part or parts of the argument under § 1.192(c)(6) the reasons why they are considered separately patentable. The absence of such a statement will be taken by the PTO as a concession by the appellant that, if the ground of rejection is sustained as to any one of the rejected claims, it will be equally applicable to all of them. Section 1.192(c)(5) continues the current practice of the Board, and is consistent with the practice of the Court of Appeals for the Federal Circuit indicated in such cases as *In re Sernaker*, 702 F.2d 989, 217 USPQ 1 (Fed. Cir. 1983), and *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

One commenter recommended that this provision be deleted, because the grouping of claims would be "redundant in view of the arguments presented in the Brief and/or prior prosecution," and such grouping may estop the patentee in subsequent litigation from showing the patentable distinctness of claims within a group. Another commenter suggested that the rule be modified to state that appellant can waive arguments for patentability as to claims solely for the purpose of simplifying issues for appeal, without giving rise to any permanent inference therefrom. These recommendations are not adopted. One reason for incorporating § 1.192(c)(5) is that it is often not clear whether or not appellant is urging that certain rejected claims are separately patentable. It is not apparent why any estoppel which may result from requiring a clear statement of appellant's position should or would differ from that which may presently result from a failure to argue that claims are separately patentable.

Another commenter asserted that § 1.192(c)(5) elevates form over substance, and improperly tries to resolve the patentability of claims on formal grounds, rather than on the merits of the individual claims. What this comment seems to say is that the patentability of each claim should be determined separately, even if not argued separately. This is, however, not the current practice, as discussed above.

Two commenters suggested either that the requirement for "reasons" be deleted from § 1.192(c)(5), or that the subsection be deleted entirely. They contended that any such "reasons" should appear in the "Argument" section (§ 1.192(c)(6)), and their repetition in § 1.192(c)(5) is redundant. These suggestions have been adopted in part. Proposed § 1.192(c)(5) required the inclusion of "reasons" in order to avoid unsupported assertions of separate patentability. The requirement of "reasons" has therefore been retained, but § 1.192(c)(5) now specifies that they be included in the appropriate portion of the "Argument" section of the brief. For example, if claims 1 to 4 are rejected under 35 U.S.C. 102 and appellant considers claim 4 to be separately patentable from claims 1 to 3, he should so state in the "Grouping of claims" section of the brief, and then give the reasons for separate patentability in the 35 U.S.C. 102 portion of the "Argument" section (i.e., under § 1.192(c)(6)(iii)).

(6) The appellant's contentions with respect to each of the issues presented for review in § 1.192(c)(4), and the basis for those contentions, including citations of authorities, statutes, and parts of the record relied on. Included in this paragraph are five subparagraphs, (i) to (v). Subparagraphs (i) to (iv) concern the grounds of rejection most commonly involved in *ex parte* appeals, namely, 35 U.S.C. 112, first and second paragraphs, 35 U.S.C. 102, and 35 U.S.C. 103. Subparagraph (v) is a general provision concerning grounds of rejection not covered by subparagraphs (i) to (iv).

The purpose of subparagraphs (i) to (iv) is to ensure that the appellant's argument concerning each appealed ground of rejection will include a discussion of the questions relevant to that ground. It is believed that compliance with the requirements of the particular subparagraphs which are pertinent to the grounds of rejection involved in an appeal will be beneficial both to the PTO and to appellants. It will not only facilitate a decision by the Board by enabling the Board to determine more quickly and precisely the appellant's position on the relevant issues, but also will help appellants to focus their arguments on those issues.

For each rejection not falling under subparagraphs (i) to (iv), subparagraph (v) provides that the argument should specify the specific limitations in the rejected claims, if appropriate, or other reasons, which cause the rejection to be in error. This language recognizes that for some grounds of rejection, it may not be necessary to specify particular claim limitations; for example, a rejection under 35 U.S.C. 101, as in *Ex parte Hibberd*, 227 USPQ 443 (BPAI 1985), or a rejection for violation of the duty of disclosure under 37 CFR 1.56(d), as in *Ex parte Harita*, 1 USPQ2d 1887 (BPAI 1986).

One commenter proposed that the provisions of parts (i) to (iv) should be optional, rather than mandatory. The PTO does not agree. One of the primary purposes of the present amendment of the rules is to require appellants to come to grips with the fundamental questions involved in determining patentability under 35 U.S.C. 102, 103 and 112. To make these provisions optional would defeat that purpose. Although parts (i) to (v) may, in the words of another commenter, "in essence merely parrot the relevant section of Title 35," experience of the PTO suggests that including them in the requirements for *ex parte* briefs is not "completely unnecessary." For similar reasons, the PTO does not favor the adoption of appropriate portions of Rule 13 of the United States Court of Appeals for the Federal Circuit and Rule 28 of the Federal Rules of Appellate Procedure, as this commenter proposed.

The latter commenter proposed as an alternative that parts (i) to (v) should be amended to, in effect, provide that the appellant must either specify the errors in the rejection or explain how the claims comply with the relevant section of the statute, rather than doing both, which may be unnecessary and create "harmful and unnecessary prosecution history estoppel" by requiring a discussion of issues not raised by the examiner. This proposal has not been adopted. Giving an appellant the option of not explaining how the claims comply with the statute would perpetuate one of the problems the rule is designed to solve.

One commenter contended that § 1.192(c)(6) (i) and (ii) improperly place on an appellant the burden of showing how the rejected claims comply with 35 U.S.C. 112. It should be remembered, however, that in the rejection from which the appeal is taken the examiner has already stated why the claims are considered unpatentable. Once this has been done, the appellant must demonstrate to the Board that the rejection is erroneous. The requirements of § 1.192(c)(6) (i) and (ii) are therefore not improper of unreasonable.

Another commenter suggested that item (B) of § 1.192(c)(6)(i) should be divided into two parts: "how-to-make" and "how-to-use." This is not considered necessary. Section 1.192(c)(6)(i) states that the argument include, "as appropriate," items (A), (B) and (C). If the rejection were for failure of the disclosure to enable one skilled in the art to make the claimed subject matter, then the argument would not have to specify how the disclosure enabled use of the subject matter, and vice versa.

A commenter suggested that the language of the first sentence of § 1.192(c)(6)(iv) is misleading, and that the second and third sentences should

be deleted. The commenter asserts that for a valid rejection the subject matter of the invention as a whole must be rendered obvious, in accordance with the test set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), and suggests that § 1.192(c)(6)(iv) be modified to require that the argument follow the analysis method of the *Graham* decision. These proposals have not been adopted. The language of § 1.192(c)(6)(iv) is based on the statute. Nothing therein is intended to change the law, or to preclude an appellant from basing arguments on the case law. The purpose of the language is to attempt to focus the argument on the specific issues of the particular case at hand, and to avoid arguments based entirely on broad generalities. The third sentence is included because it has been observed that in a number of cases appellants ignore the secondary references applied by the examiner, and argue a rejection under 35 U.S.C. 103 as though it were a rejection under 35 U.S.C. 102.

(7) An appendix containing a copy of the claims involved in the appeal.

Pursuant to one comment, the title of § 1.192(c)(7) has been changed to "Appendix."

One commenter urged that the rule should not require that the copy of the claims be located at any particular place in the brief. This proposal is not adopted, as it is considered desirable that the examiner and the Board be able to locate the copy of the claims quickly by placing it in a common position in all briefs.

Two commenters expressed the concern that § 1.192(c) does not permit the inclusion in a brief of any items other than the seven items specified. Other commenters suggested that other items be included, such as a list of the references, table of contents, table of cases, etc. It should be emphasized that § 1.192(c) merely specifies the minimum requirements for a brief, and does not prohibit the inclusion of any other material which an appellant may consider necessary or desirable. A brief is in compliance with § 1.192(c) as long as it includes items (1) to (7) in the order set forth (with the appendix, item (7), at the end).

Paragraph (d) provides that if a brief is filed which does not comply with all the requirements of paragraph (c), the appellant will be notified of the reasons for non-compliance and given a period of one month within which to file an amended brief. The appeal will be dismissed if the appellant does not file an amended brief within the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance of which he or she was notified.

Several commenters proposed that the Board, rather than the examiner, should be the arbiter of whether a brief complies with § 1.192(c). These proposals have not been adopted. The question of whether a brief complies with a rule is a matter within the jurisdiction of the examiner. Moreover, adoption of these proposals would require the application file to be sent to the Board to review the brief, then returned to the examiner for the examiner's answer. Such a procedure would not only cause unnecessary delays, but would contravene one of the purposes of § 1.192(c) by increasing the workload of the Board. Under § 1.192(d), as adopted, the appellant may file an amended brief to correct any deficiencies in the original. Moreover, if appellant disagrees with the examiner's holding of non-compliance, a petition under 37 CFR 1.181 may be filed.

Paragraph (d) also adds the following sentence:

> Any arguments or authorities not included in the brief may be refused consideration by the Board of Patent Appeals and Interferences.

This sentence emphasizes that all arguments and authorities which an appellant wishes the Board to consider should be included in the brief. It should be noted that arguments not presented in the brief and made for the first time at oral hearing are not normally entitled to consideration. *In re Chiddix*, 209 USPQ 78 (Comr. 1980); *Rosenblum v. Hiroshima*, 220 USPQ 383 (Comr. 1983). A number of commenters were concerned that this sentence of § 1.192(d) would preclude the filing of a supplemental paper if a new argument or authority should become available or relevant after the brief was filed. No such result is intended. The sentence in question uses the word "may" to leave open the possibility that the Board has leeway to consider arguments or authorities not included in the brief under circumstances where the failure to include them can be justified. Examples of such circumstances would be where a pertinent decision of a court or other tribunal was not published until after the brief was filed, or where a particular argument or authority was not applicable to any of the grounds of rejection in the final rejection, but was relevant to a new point of argument raised in the examiner's answer.

C. Contents of Reply Brief

Section 1.193(b), as amended, inserts the following as the second and third sentences:

> The new points of argument shall be specifically identified in the reply brief. If the examiner determines that the reply brief is not directed only to new points of argument raised in the examiner's answer, the examiner may refuse entry of the reply brief and will so notify the appellant.

Since the reply brief must be limited to any new points of argument raised in the examiner's answer, compliance with the requirement of the second sentence should facilitate both preparation of the reply brief by appellant and consideration of the reply brief of the PTO. The reply brief is appropriately limited to new points of argument raised in the examiner's answer because appellants have an obligation to present arguments supporting their positions in their opening briefs. Considering an argument advanced for the first time in a reply brief would not only delay the proceeding, but also would entail the risk of an improvident or ill-advised opinion on the legal issues tendered. *Von Brimer v. Whirpool Corp.*, 536 F.2d 838, 846, 190 USPQ 528, 534 (9th Cir. 1976).

The final sentence of § 1.193(b), as amended, provides that the reply may be accompanied by, rather than include, any amendment or material appropriate to the new ground of rejection. This change in the rule makes clear that the amendment or other material must be presented in a separate paper, rather than in the reply itself.

A number of commenters proposed that the Board, not the examiner, should determine whether or not the reply brief is directed only to new points raised in the examiner's answer. In essence they feel that the examiner is not in a position to fairly judge whether a reply brief complies with the rule. These proposals have not been adopted. Section 1.193(b) requires that the appellant be notified if the reply brief is not entered because of non-compliance with the rule, and an appellant who disagrees with that ruling may seek review by way of a petition under 37 CFR 1.181. This is essentially no different than the procedure currently followed (see *Manual of Patent Examining Procedure*, § 1208.01, p. 1200–9, 5th Ed., Rev. 7 (Dec. 1987)).

One commenter suggested that the examiner's answer be eliminated; another, that the examiner should have to file the examiner's answer first. These are both beyond the scope of the present proposal, and have not been adopted.

(3) Time Period for Requesting an Oral Hearing

Section 1.194(b), as amended, adds the following sentence after the first sentence:

> If the examiner's answer states a new ground of rejection and if appellant files a reply as provided by § 1.193(b), then the written request must be made within three months after the date of the filing of the reply.

The present rule does not provide the appellant with an additional time period for requesting an oral hearing in the event that the examiner's answer states a new ground of rejection. If the answer states a new ground of rejection, § 1.193(b) provides that appellant's reply may also include any amendment or material appropriate to the new ground of rejection. However, under § 1.194(b) appellant must file the request for oral hearing within one month after the date of the answer whereas the reply thereto must be filed within two months from the date of the answer. Consequently, appellant must file a request for oral hearing before having the benefit of the examiner's views, if any, with respect to the reply.

Although the examiner does not normally issue a supplemental answer in response to a reply, see *Manual of Patent Examining Procedure, supra*, § 1208.01, the amendment to § 1.194(b) permits the appellant to postpone filing a request for an oral hearing until three months after the date the reply is filed. This will give the appellant time to receive the examiner's response, if any, to the reply before the appellant has to decide whether to request an oral hearing.

One commenter suggested that whenever the examiner makes a new ground of rejection in the examiner's answer and appellant files a reply brief, a supplemental examiner's answer should be required, and appellant then be permitted to file a supplemental reply thereto. This suggestion has not been adopted. Under present practice (see *Manual of Patent Examining Procedure, supra)* the examiner includes a new ground of rejection in the examiner's answer, rather than reopening *ex parte* prosecution, only under circumstances where the PTO has determined that the appellant will not be unfairly prejudiced, e.g., where the reference is not basic and materially better in meeting all the claims, and the requirements for making an action final are met. This sufficiently protects the rights of the appellant, while at the same time preventing the addition of a further round of papers to the file.

(4) Procedure Following Final Rejection, Remand Under § 1.196(b)

Section 1.196(b)(1), as amended, adds the following sentence as the penultimate sentence of the section:

> Should the examiner repeat the rejection the applicant may again appeal to the Board of Patent Appeals and Interferences.

Under § 1.196(b), the Board may, in its decision on an *ex parte* appeal, make a new rejection of one or more appealed claims, in which case the appellant has the option of (1) submitting an appropriate amendment of the rejected claims, and/or a showing of facts, (2) requesting reconsideration, or (3) treating the decision as a final decision. If the appellant elects option (1), the case is remanded to the examiner for consideration. If the examiner does not consider that the amendment and/or showing of facts overcome the rejection, he or she will again reject the claims; if appropriate, the rejection will be made final.

An applicant in whose application such a final rejection has been made by the examiner may mistakenly believe that he or she is entitled to review by the Board of the rejection by virtue of the fact that the application was previously on appeal. The amendment corrects this belief by making clear that after such a rejection, an applicant who desires further review of the matter must file a new appeal to the Board. The language of the amendment is similar to the fourth sentence of § 1.196(d).

The proposed amendment to § 1.196(b)(1) began "Should the examiner make the rejection final," but as one commenter pointed out, 35 U.S.C. 134 permits an appeal to the Board of claims which have been twice rejected. Since the claims referred to in § 1.196(b)(1) would have been twice rejected (once by the Board and once by the examiner), the examiner's rejection could be appealed even if not made final. The beginning of the amendment has therefore been changed to "Should the examiner again reject the application."

This commenter also asserted that § 1.196(b)(1) is ambiguous, in that it implies that a separate fee would be due for the subsequent appeal, "an interpretation contrary to 35 U.S.C. 134." The PTO considers that the statute requires a separate fee for such an appeal. In the § 1.196(b) situation, the appellant has already filed an appeal, paid the fee, and received a decision thereon by the Board. Any rejection under § 1.196(b) included in the Board's decision would be, according to the rule, on "any grounds not involved in the appeal." Thus, an appeal from the subsequent rejection by the examiner would be an entirely new appeal involving a different ground and would require a new notice of appeal and the payment of another fee.

(5) Request for Access by Interference Party

Section 1.612(a), as amended, adds the following sentence as the last sentence of the section:

> A party seeking access to any abandoned or pending application referred to in the opposing party's involved application or access to any pending application referred to in the opposing party's patent must file a motion under § 1.635.

The amendment requires an interference party seeking access either to a pending or abandoned application referred to in an opposing party's involved application or to a pending application referred to in an opposing party's involved patent to file a motion under 37 CFR 1.635. Such a motion is decided by an examiner-in-chief (§ 1.640(b)).

Under the present practice, access can only be obtained by filing an *ex parte* petition to the Commissioner accompanied by the petition fee set forth in § 1.17(i) and normally no decision is rendered on the petition until after the opposing party has had an opportunity to respond to the petition. The amendment expedites the interference proceeding by eliminating the delays inherent in the petition process. By requiring the party seeking access to file a motion under § 1.635, that party will first have to confer with the opposing party in an effort to resolve the issue of access as required by § 1.637(b). The examiner-in-chief will not have to decide the issue unless it cannot be resolved by the parties.

(6) Access to Applications

Section 1.14(e), as amended, deletes the word "of" from the phrase "or of any papers relating thereto" and adds a reference to § 1.612(a) by adding the following sentence as the last sentence thereof:

> See § 1.612(a) for access by an interference party to a pending or an abandoned application.

Section 1.14(e) as presently worded appears to limit a request by a member of the public to copies of, but not access to, any papers relating to any pending or abandoned application. Any such limitation was unintentional. The amended language will permit a member of the public to request both access to and copies of those papers.

(7) Request for Interference with an Application or Patent

Sections 1.604(a) and 1.607(a), as amended, provide for the situation in which a patent applicant requests an interference with another application or patent, respectively, on the basis of one or more claims which are already present in his or her application. The present rules require that when an applicant seeks an interference with another application or an unexpired patent, he or she must present a claim corresponding to the proposed count. The amended rules eliminate this requirement if a claim or claims corresponding to the proposed count are already in the application, and the applicant identifies them as such.

(8) Motion to Declare Additional Interference

Section 1.637(e)(1)(vi), as amended, requires that a motion to declare an additional interference under 37 CFR 1.633(e)(1) between an additional application not involved in the interference and owned by a party and an opponent's application or patent involved in the interference either (1) designate the claims of the opponent's application or patent which define the same patentable invention defined by the proposed count, or (2), if the opponent's application does not contain any such claim, the moving party must propose a claim to be added to the opponent's application. The present § 1.637(e)(2)(vi) includes requirement (1), but only infers alternative requirement (2). The amended section specifically includes both requirements.

(9) Filing of Reissue Application During Interference

Section 1.662(b), as amended, inserts a comma after "§ 1.633(h)" and adds the language "or would not be appropriate" at the end of the last sentence. The present rule contemplates that a reissue application may be filed by a patentee involved in an interference only for one of two reasons: Either for the purpose of avoiding the interference, or for some other purpose relating to the interference, e.g., to add claims corresponding to a proposed new count. In the first case, judgment would be entered against the patentee, and in the second case, a motion under § 1.633(h) to add the reissue application to the interference would be appropriate.

However, it has been found that a patentee involved in an interference may file a reissue application for some other reason not contemplated by the rule, and for which the entry of judgment or a motion under § 1.633(h) would not be appropriate. For example, the patentee might file a reissue application for the purpose of amending claims of the patent which are directed to an invention which is patentably distinct from the issue of the interference and which is not disclosed by the opposing party. In such a situation, addition of the reissue application to the interference would be unnecessary. The amendment of § 1.662(b) accommodates this third possibility by providing that, instead of filing a motion under § 1.633(h) to add the reissue application to the interference, a patentee can show good cause why such a motion would not be appropriate under the particular circumstances involved.

(10) Applications Under Secrecy Order

Section 5.3(b), as amended, deletes the language "under secrecy order copies claims from an issued patent" and inserts in its place the language "is under secrecy order seeks to provoke an interference with an issued patent" to make the section's language consistent with that of § 1.607(d). In addition, the reference to "§ 1.205(c)" is corrected to read "§ 1.607(d)".

Postponement of Amendment of Interference Estoppel Rule

The notice of proposed rulemaking included proposed amendments of 37 CFR 1.658(c) concerning the effect of a judgment in an interference. In response to requests by a number of commenters for further time to study the effect of the proposed amendments, the proposal will not be implemented at this time. A proposed amendment of § 1.658(c) will be published later; in the meantime, interested parties are invited to submit their comments and suggestions.

Accordingly, present § 1.658(c) remains in effect.

Environmental, Energy and Other Considerations

This rule change will not have a significant impact on the quality of the human environment or conservation of energy resources.

The rule change is in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce certified to the Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)), because it is intended to expedite the disposition of appeals and to simplify by clarification and amplification certain of the rules governing the conduct of an interference. The expedited disposition of appeals will permit the small entity to make earlier business decisions which may be affected by a pending appeal. The effect of the clarification and amplification of the rules relating to interferences will be to reduce the costs associated with involvement in an interference.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this notice has no Federalism implications affecting the relationship between the national government and the states as outlined in Executive Order 12612.

This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 37 CFR Parts 1 and 5

Administrative practice and procedure, Authority delegations (government agencies), Conflict of interests, Courts, Inventions and patents, Lawyers.

Pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, Parts 1 and 5 of Title 37 of the Code of Federal Regulations are amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.14 is amended by revising paragraph (e) to read as follows:

§ 1.14 Patent applications preserved in secrecy.

* * * * *

(e) Any request by a member of the public seeking access to, or copies of,

any pending or abandoned application preserved in secrecy pursuant to paragraphs (a) and (b) of this section, or any papers relating thereto, must (1) be in the form of a petition and be accompanied by the petition fee set forth in § 1.17(i) or (2) include written authority granting access to the member of the public in that particular application from the applicant or the applicant's assignee or attorney or agent of record. See § 1.612(a) for access by an interference party to a pending or abandoned application.

3. Section 1.131 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.131 Affidavit or declaration of prior invention to overcome cited patent or publication.

(a) When any claim of an application or a patent under reexamination is rejected on reference to a domestic patent which substantially shows or describes but does not claim the same patentable invention, as defined in § 1.601(n), as the rejected invention, or on reference to a foreign patent or to a printed publication, and the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the person qualified under §§ 1.42, 1.43 or 1.47, shall make oath or declaration as to facts showing a completion of the invention in this country before the filing date of the application on which the domestic patent issued, or before the date of the foreign patent, or before the date of the printed publication, then the patent or publication cited shall not bar the grant of a patent to the inventor or the confirmation of the patentability of the claims of the patent, unless the date of such patent or printed publication is more than one year prior to the date on which the inventor's or patent owner's application was filed in this country.

(b) The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration of their absence satisfactorily explained.

4. Section 1.192 is amended by revising paragraph (a) and adding new paragraphs (c) and (d) to read as follows:

§ 1.192 Appellant's brief.

(a) The appellant shall, within 2 months from the date of the notice of appeal under § 1.191 in an application, reissue application, or patent under reexamination, or within the time allowed for response to the action appealed from, if such time is later, file a brief in triplicate. The brief must be accompanied by the requisite fee set forth in § 1.17(f) and must set forth the authorities and arguments on which the appellant will rely to maintain the appeal.

* * * * *

(c) The brief shall contain the following items under appropriate headings and in the order here indicated:

(1) *Status of Claims.* A statement of the status of all the claims, pending or cancelled, and identifying the claims appealed.

(2) *Status of Amendments.* A statement of the status of any amendment filed subsequent to final rejection.

(3) *Summary of Invention.* A concise explanation of the invention defined in the claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters.

(4) *Issues.* A concise statement of the issues presented for review.

(5) *Grouping of Claims.* For each ground of rejection which appellant contests and which applies to more than one claim, it will be presumed that the rejected claims stand or fall together unless a statement is included that the rejected claims do not stand or fall together, and in the appropriate part or parts of the argument under subparagraph (c)(6) of this section appellant presents reasons as to why appellant considers the rejected claims to be separately patentable.

(6) *Argument.* The contentions of the appellant with respect to each of the issues presented for review in subparagraph (c)(4) of this section, and the basis therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate heading.

(i) For each rejection under 35 U.S.C. 112, first paragraph, the argument shall specify the errors in the rejection and how the first paragraph of 35 U.S.C. 112 is complied with, including, as appropriate, how the specification and drawings, if any,

(A) Describe the subject matter defined by each of the rejected claims,

(B) Enable any person skilled in the art to make and use the subject matter defined by each of the rejected claims, and

(C) Set forth the best mode contemplated by the inventor of carrying out his or her invention.

(ii) For each rejection under 35 U.S.C. 112, second paragraph, the argument shall specify the errors in the rejection and how the claims particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(iii) For each rejection under 35 U.S.C. 102, the argument shall specify the errors in the rejection and why the rejected claims are patentable under 35 U.S.C. 102, including any specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection.

(iv) For each rejection under 35 U.S.C. 103, the argument shall specify the errors in the rejection and, if appropriate, the specific limitations in the rejected claims which are not described in the prior art relied on in the rejection, and shall explain how such limitations render the claimed subject matter unobvious over the prior art. If the rejection is based upon a combination of references, the argument shall explain why the references, taken as a whole, do not suggest the claimed subject matter, and shall include, as may be appropriate, an explanation of why features disclosed in one reference may not properly be combined with features disclosed in another reference. A general argument that all the limitations are not described in a single reference does not satisfy the requirements of this paragraph.

(v) For any rejection other than those referred to in paragraphs (c)(6) (i) to (iv) of this section, the argument shall specify the errors in the rejection and the specific limitations in the rejected claims, if appropriate, or other reasons, which cause the rejection to be in error.

(7) *Appendix.* An appendix containing a copy of the claims involved in the appeal.

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, the appellant will be notified of the reasons for non-compliance and provided with a period of one month within which to file an amended brief. If the appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will be dismissed. Any arguments or authorities not included in the brief may be refused consideration by the Board of Patent Appeals and Interferences.

5. Section 1.193 is amended by revising paragraph (b) to read as follows:

§ 1.193 Examiner's answer.

* * * * *

(b) The appellant may file a reply brief directed only to such new points of argument as may be raised in the examiner's answer, within one month from the date of such answer. The new points of argument shall be specifically identified in the reply brief. If the examiner determines that the reply brief is not directed only to new points of argument raised in the examiner's answer, the examiner may refuse entry of the reply brief and will so notify the appellant. If the examiner's answer states a new ground of rejection appellant may file a reply thereto within two months from the date of such answer; such reply may be accompanied by any amendment or material appropriate to the new ground.

6. Section 1.194 is amended by revising paragraph (b) to read as follows:

§ 1.194 Oral hearing.

* * * * *

(b) If appellant desires an oral hearing, appellant must file a written request for such hearing accompanied by the fee set forth in § 1.17(g) within one month after the date of the examiner's answer. If the examiner's answer states a new ground of rejection and if appellant files a reply as provided for by § 1.193(b), then the written request must be made within three months after the date of the filing of the replay. If appellant requests an oral hearing and submits therewith the fee set forth in § 1.17(g), an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board.

* * * * *

7. Section 1.196(b)(1) is revised to read as follows:

§ 1.196 Decision by the Board of Patent Appeals and Interferences.

* * * * *

(b) * * *

(1) The appellant may submit an appropriate amendment of the claims so rejected or a showing of facts, or both, and have the matter reconsidered by the examiner in which event the application will be remanded to the examiner and the decision of the Board of Patent Appeals and Interferences shall not be considered final for the purpose of judicial review. The statement shall be binding upon the examiner unless an amendment or showing of facts not previously of record be made which, in the opinion of the examiner, overcomes the new ground for rejection stated in the decision. Should the examiner again reject the application the applicant may again appeal to the Board of Patent Appeals and Interferences. When appropriate, upon conclusion of proceedings on remand before the examiner, the Board of Patent Appeals and Interferences may enter an order otherwise making its decision final.

* * * * *

8. Section 1.604(a) is revised to read as follows:

§ 1.604 Request for interference between applications by an applicant.

(a) An applicant may seek to have an interference declared with an application of another by,

(1) Suggesting a proposed count and presenting at least one claim corresponding to the proposed count or identifying at least one claim in his or her application that corresponds to the proposed count,

(2) Identifying the other application and, if known, a claim in the other application which corresponds to the proposed count, and

(3) Explaining why an interference should be declared.

* * * * *

9. Section 1.607(a) is revised to read as follows:

§ 1.607 Request by applicant for interference with patent.

(a) An applicant may seek to have an interference declared between an application and an unexpired patent by,

(1) Identifying the patent,

(2) Presenting a proposed count,

(3) Identifying at least one claim in the patent corresponding to the proposed count,

(4) Presenting at least one claim corresponding to the proposed count or identifying at least one claim already pending in his or her application that corresponds to the proposed count, and, if any claim of the patent or application identified as corresponding to the proposed count does not correspond exactly to the proposed count, explaining why each such claim corresponds to the proposed count, and

(5) Applying the terms of any application claim,

(i) Identified as corresponding to the court, and

(ii) Not previously in the application to the disclosure of the application.

* * * * *

10. Section 1.612(a) is revised to read as follows:

§ 1.612 Access to applications.

(a) After an interference is declared, each party shall have access to and may obtain copies of the files of any application set out in the notice declaring the interference, except for affidavits filed under § 1.131 and any evidence and explanation under § 1.608 filed separate from an amendment. A party seeking access to any abandoned or pending application referred to in the opposing party's involved application or access to any pending application referred to in the opposing party's patent must file a motion under § 1.635.

* * * * *

11. Paragraph (e)(1)(vi) of § 1.637 is revised to read as follows:

§ 1.637 Content of motions.

* * * * *

(e) * * *

(1) * * *

(vi) Identify all claims in the opponent's application or patent which should be designated to correspond to each proposed count; if the opponent's application does not contain any such claim, the motion shall propose a claim to be added to the opponent's application.

* * * * *

12. Paragraph (b) of § 1.662 is revised to read as follows:

§ 1.662 Request for entry of adverse judgment; reissue filed by patentee.

* * * * *

(b) If a patentee involved in an interference files an application for reissue during the interference and omits all claims of the patent corresponding to the counts of the interference for the purpose of avoiding the interference, judgment may be entered against the patentee. A patentee who files an application for reissue other than for the purpose of avoiding the interference shall timely file a preliminary motion under § 1.633(h), or show good cause why the motion could not have been timely filed or would not be appropriate.

* * * * *

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

13. The authority citation for 37 CFR Part 5 is revised to read as follows:

Authority: 35 U.S.C. 6, 41, 181–188, the Export Administration Act of 1979, as amended, 50 U.S.C. App. 2401 *et seq.*, the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.*, the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*, and

the Nuclear Non-Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.*, and the delegations in the regulations under these acts to the Commissioner (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

14. Paragraph (b) of § 5.3 is revised to read as follows:

§ 5.3 Prosecution of application under secrecy orders; withholding patent.

* * * * *

(b) An interference will not be declared involving national applications under secrecy order. However, if an applicant whose application is under secrecy order seeks to provoke an interference with an issued patent, a notice of that fact will be placed in the file wrapper of the patent. (See § 1.607(d).)

* * * * *

Note: This Appendix A will not appear in the Code of Federal Regulations.

Appendix A—Requirements for Examiner's Answer

Chapter 1200 of the Manual of Patent Examining Procedure will be amended to require that the examiner's answer include, in the order indicated, the following items:

(1) Status of Claims

A statement of whether the examiner disagrees with the statement of the status of claims contained in the brief and a correct statement of the status of all the claims pending or cancelled, if necessary.

(2) Status of Amendments

A statement of whether the examiner disagrees with the statement of the status of amendments contained in the brief, and an explanation of any disagreement.

(3) Summuary of Invention

A statement of whether the examiner disagrees with the summary of invention contained in the brief, an explanation of why the examiner disagrees, and a correct summary of invention, if necessary.

(4) Issues

A statement of whether the examiner disagrees with the statement of the issues in the brief and an explanation of why the examiner disagrees, including:

(i) Identification of any issues which are petitionable rather than appealable, and

(ii) Identification of any issues or grounds of rejection on appeal which the examiner no longer considers applicable.

(5) Grouping of Claims

A statement of whether the examiner disagrees with any statement in the brief that certain claims do not stand or fall together, and, if the examiner disagrees, an explanation as to why those claims are not separately patentable.

(6) Claims Appealed

A statement of whether the copy of the appealed claims contained in the appendix to the brief is correct and if not, a correct copy of any incorrect claim.

(7) References of Record

A listing of the references of record relied on, and in the case of non-patent references, the relevant page or pages.

(8) New References

A statement of whether or not any new reference is being applied and a listing of each such reference being cited for a new ground of rejection in the examiner's answer, and in the case of non-patent references, the relevant page or pages.

(9) Grounds of Rejection

For each ground of rejection applicable to the appealed claims, an explanation of the ground of rejection, or reference to a final rejection or other single prior action for a clear exposition of the rejection.

(i) For each rejection under 35 U.S.C. 112, first paragraph, the examiner's answer, or the single prior action, shall explain how the first paragraph of 35 U.S.C. 112 is not complied with, including, as appropriate, how the specification and drawings, if any, (a) do not describe the subject matter defined by each of the rejected claims, (b) would not enable any person skilled in the art to make and use the subject matter defined by each of the rejected claims, and (c) do not set forth the best mode contemplated by the appellant of carrying out his or her invention.

(ii) For each rejection under 35 U.S.C. 112, second paragraph, the examiner's answer, or single prior action, shall explain how the claims do not particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(iii) For each rejection under 35 U.S.C. 102, the examiner's answer, or single prior action, shall explain why the rejected claims are anticipated or not patentable under 35 U.S.C. 102, pointing out where all of the specific limitations recited in the rejected claims are found in the prior art relied upon in the rejection.

(iv) For each rejection under 35 U.S.C. 103, the examiner's answer, or single prior action, shall state the ground of rejection and point out where each of the specific limitations recited in the rejected claims is found in the prior art relied on in the rejection, shall identify any difference between the rejected claims and the prior art relied on and shall explain how the claimed subject matter is rendered unpatentable over the prior art. If the rejection is based upon a combination of references, the examiner's answer, or single prior action, shall explain the rationale for making the combination.

(v) For each rejection under 35 U.S.C. 102 or 103 where there may be questions as to how limitations in the claims correspond to features in the prior art, the examiner, in addition to the requirements of paragraphs (9) (iii) and (iv) of this appendix, should compare at least one of the rejected claims feature by feature with the prior art relied on in the rejection. The comparison shall align the language of the claim side by side with a reference to the specific page, line number, drawing reference number and quotation from the prior art, as appropriate.

(vi) For each rejection, other than those referred to in paragraphs (i) to (v) of this appendix, the examiner's answer, or single prior action, shall specifically explain the basis for the particular rejection.

(10) New Ground of Rejection

A statement of whether or not any new ground of rejection is being made in the examiner's answer and a complete statement and explanation of any such new ground. The requirements of paragraph (9) of this appendix shall be complied with for any new ground of rejection.

(11) Response to Argument

A statement of whether the examiner disagrees with each of the contentions of appellant in the brief with respect to the issues presented and an explanation of the reasons for disagreement with any such contention. If any ground of rejection is not argued and responded to by appellant, the response shall point out each claim affected.

(12) Period of Response to New Ground of Rejection

A statement setting the period for appellant to file a reply to any new ground of rejection, if necessary.

Dated: May 3, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88-14160 Filed 6-22-88; 8:45 am]

BILLING CODE 3510-16-M

Federal Register

Thursday
June 23, 1988

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Daphnopsis hellerana, Hymenoxys acaulis, and Arenenaria cumberlandensis; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Daphnopsis Hellerana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Daphnopsis hellerana* to be an endangered species. *Daphnopsis hellerana* is a small tree or large shrub endemic to evergreen and semi-evergreen seasonal forests on limestone hills of the karst region of northern Puerto Rico. The species has been seriously impacted by agriculture, urbanization, and limestone quarrying. This final rule will implement for *Daphnopsis hellerana* the Federal protection and recovery provisions afforded by the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: July 25, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan R. Silander at the Caribbean Field Office address (809/851-7297) or Mr. Tommy Turnipseed at the Atlanta Regional Office address (404/331-3583 or FTS 242-3583).

SUPPLEMENTARY INFORMATION:

Background

Daphnopsis hellerana was first discovered and collected by Amos Arthur Heller in 1900 on a limestone hill near Bayamon, Puerto Rico. The species was not seen again until 1958, when Roy O. Woodbury found it in Toa Baja, near the type locality (Nevling and Woodbury 1966). Since 1958, three other populations have been located in the karst region of Puerto Rico, two in the Toa Baja/Dorado area, and the third near Isabela in northwestern Puerto Rico (Vivaldi and Woodbury 1981). The Isabela population and the plants rediscovered by Woodbury have since been destroyed, leaving two small populations of seven trees in Toa Baja and Dorado. The Toa Baja population is on Federal land under the jurisdiction of the National Institutes of Health (U.S. Department of Health and Human Services) and leased to the University of Puerto Rico School of Medicine. The Dorado population is on Commonwealth public land. These 14 individuals are the only plants of this species known to exist.

Daphnopsis hellerana is an evergreen shrub or small tree reaching 20 feet (6 meters) in height, with a stem diameter of 2 inches (5 centimeters). The leaves are simple, alternate, elliptic to obovate in shape, and blunt or rounded at the apex. Both leaves and twigs are golden hairy when young. Male and female flowers are borne on separate plants (dioecious), and terminally clustered. The male flowers are small, tubular, and finely hairy; the female flowers are smaller, less than one-fourth inch (one-half centimeter) long, bell-shaped, and also finely hairy. The fruit is an elliptic, one-seeded, white berry that is less than three fourths of an inch (2 centimeters) long. The species is endemic to low elevation evergreen and semi-evergreen forests (subtropical moist forests) on limestone hills in the karst region of northern Puerto Rico.

Nearly all of the known populations of *Daphnopsis hellerana* have been located near Puerto Rico's principal population center (the San Juan/Bayamon area). As a result, urban and industrial expansion have eliminated known and potential habitat. In particular, construction of dwellings and roads, limestone quarrying for this construction, landfills, and clearing by yam planters have together reduced the species to its present low numbers. In addition, the extreme rarity of the species and its dioecious habit lower the probability of successful seed production and dispersal.

Daphnopsis hellerana was recommended for Federal listing by the Smithsonian Institution (Ayensu and Defilipps 1978). The species was included among the plants being considered as endangered or threatened species by the Fish and Wildlife Service, as published in the **Federal Register** (45 FR 82479) dated December 15, 1980. The species was designated category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened), and was retained in category 1 in the November 28, 1983, update (48 FR 53640) of the 1980 notice, and the September 27, 1985, revised notice (50 FR 39526).

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found in October of 1983, 1984, and 1985, that listing *Daphnopsis hellerana* was warranted but precluded by other pending listing actions, in accordance with Section 4(b)(3)(B)(iii) of the Act. The Service proposed listing *Daphnopsis hellerana* on July 6, 1987 (52 FR 25265).

Summary of Comments and Recommendations

In the July 6, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual report of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newpaper notice inviting general public comment was published in *El Nuevo Dia* on July 21, 1987. Two letters of comment were received and are discussed below. A public hearing was neither requested nor held.

Comments were received from the U.S. Environmental Protection Agency and Lorin I. Nevling of the Illinois Department of Energy and Natural Resources.

Administrators of the U.S. Environmental Protection Agency stated that they knew of no ongoing or proposed actions that would affect the species and that they had no information on the status of the species.

Mr. Lorin Nevling, the author of a monograph of the genus *Daphnopsis*, supported the listing but commented on the spelling of the species name. The name has been spelled both as *helleriana* and *hellerana*. In this final rule the spelling *hellerana* has been retained in accordance with the rules of nomenclature.

The Caribbean Primate Research Center, in a telephone conversation, expressed interest in cooperating with the U.S. Fish and Wildlife Service in the conservation of this species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Daphnopsis hellerana* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined

to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Daphnopsis hellerana* Urban (no common name) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Modification of habitat and direct destruction of plants have been significant factors reducing the number of *Daphnopsis hellerana.* Deforestation for construction and yam cultivation, the leveling of limestone hills for construction material, and random cutting have all contributed to the species' decline. The Commonwealth (Autoridad de Tierras) land is not in any protection status, and maybe subject to construction of roads and powerlines and to quarrying for construction material. The population on Federal land is not recognized or protected by any existing management plan.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor in the decline of this species. However, any take by curiosity seekers could be extremely detrimental.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has recently adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Daphnopsis hellerana* is not yet on the Commonwealth list. Federal listing would provide interim protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* Since *Daphnopsis hellerana* is dioecious, and only two populations of seven plants each are known to exist, rarity and the resulting effects on reproduction and genetic diversity are factors that could eventually lead to the species' extinction. Seedlings have been observed in the past, but there is no evidence at any site that they survived to maturity. Furthermore, there has been a steady decline in the number of mature plants at sites that have otherwise remained undisturbed. These observations suggest that recruitment is not adequate to sustain the remaining populations. There is also no evidence of vegetative reproduction by *Daphnopsis hellerana,* and, thus, the species' continued existence may depend upon reproduction from seed and maintenance of a minimum population size.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Daphnopsis hellerana* as endangered. Since there are so few individuals remaining and a continuing risk of damage to the plants and/or their habitat, endangered status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The number of individuals of *Daphnopsis hellerana* is sufficiently small that collecting or vandalism could serious affect the survival of the species. Publication of critical habitat descriptions and maps in the Federal Register would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and landowners will be notified of the location and importance of protecting this species' habitat. Protection of this species' habitat would also be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Daphnopsis hellerana* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the probihitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Daphnopsis hellerana,* as discussed above. Federal involvement is expected only if there is a change in the present status of National Institutes of Health lands in the Toa Baja area.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for *Daphnopsis hellerana* will ever be sought or issued since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Hamilton Building, Room 400, Washington, DC 20240 (202/343–4968).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessement, as defined under the

authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted prusuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244)

References Cited

Ayensu, E.S., and R.A. DeFilipps. 1978. Endangered and Threatened Plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, DC xv + 403 pp.

Nevling, L.I., and R.O. Woodbury. 1966. Rediscovery of *Daphnopsis hellerana*. J. Arnold Arbor. 47:262–265.

Vivaldi, J.L., and R.O. Woodbury. 1981. Status report on *Daphnopsis hellerana* Urban. Unpublished status report submitted to the U.S. Fish and Wildlife Service, Atlanta, Georgia. 56 pp.

Author

The primary author of this final rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Thymelaeaceae, to the List of Endangered and Threatened Plants:

§17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Thymelaeaceae—Mezereum family:						
Daphnopsis Hellerana	None	U.S.A. (PR)	E	309	NA	NA
*	*	*	*	*	*	

Dated: June 3, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–14245 Filed 6–22–88; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Hymenoxys acaulis var. glabra (Lakeside daisy)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines threatened status for *Hymenoxys acaulis* var. *glabra* (Lakeside daisy), under authority of the Endangered Species Act (Act) of 1973, as amended. This plant is known only from Manitoulin Island and the Bruce Peninsula in Ontario, Canada, where it is considered rare, and one fragmented population in Ottawa County, Ohio. It has apparently been extirpated from two counties in Illinois. The Ohio population occurs on private land, where its continued existence is threatened by habitat alteration caused by limestone quarrying activities and the unmanaged succession of woody overgrowth. This action will implement Federal protection provided by the Act for *Hymenoxys acaulis* var. *glabra*.

EFFECTIVE DATE: July 28, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator (see **ADDRESSES** section) at 612/725–3276 or FTS 725–3276.

SUPPLEMENTARY INFORMATION:

Background

Hymenoxys acaulis var. *glabra* (Lakeside daisy) is a member of the family Asteraceae. It has previously been recognized as *Actinea herbacea* (Greene) Robins. and *Actinea acaulis* (Pursh) Spring var. *glabra* (Gray) Parker. While conducting taxonomic research on the western species of *Actinea*, Parker (1950) demonstrated that *Hymenoxys acaulis* var. *glabra* is the correct name for the plant.

A perennial with a taproot and branching caudex, *Hymenoxys acaulis* var. *glabra* is characterized by densely tufted, thick spatulate to nearly linear basal leaves 1–8 centimeters (0.4–3.1 inches) long and up to 1 centimeter (0.4 inches) wide, strongly punctuate with a scape-like peduncle 5–25 centimeters (2–10 inches) high, which bears a solitary head with 10–30 radiating yellow rays. Most individuals in a population tend to bloom at the same time in late April to mid-May, producing radiant mass of yellow flowers. After flowering the plants become light gray in color and quite inconspicuous and easily overlooked; in a few weeks the rich green color returns (R.E. Moseley, Ohio Department of Natural Resources, pers. comm. September 1985). DeMauro (Will County Illinois, Forest Preserve District, pers. comm. 1987) reports observing a gray color and flattening of leaves of *H. acaulis* var. *glabra* when the plant is water stressed; the dark green color returns several hours after watering.

In the United States *Hymenoxys acaulis* var. *glabra* is currently known from one fragmented population on the Marblehead Peninsula in Ottawa County, Ohio, where it occurs on dry rocky prairie habitat, much of which has been altered by limestone quarrying activities (Weed 1890, Wunderlin 1971, Cusick and Burns 1984). The plant has also been recorded from Will and Tazewell Counties in Illinois (Wunderlin 1971, John Schwegman, Illinois Department of Conservation, pers. comm. April 1986). The Illinois populations, however, are considered to be extirpated (Schwegman, pers. comm. April 1986). In Canada, where the plant

is considered rare, it is known from two locations on the Bruce Peninsula with the largest population scattered in two 5-acre patches, and approximately 12 sites on Manitoulin Island (H.V. Elliot, Stokes Bay, Ontario, pers. comm. 1987, White and Maher 1983, DeMauro 1987). Available records do not indicate a serious recent decline in the Canadian populations, but uncontrolled woody overgrowth always poses a threat.

Moseley (1930) raised a question about whether this plant is indigenous to Ohio, although Weed (1890) had pointed out that it had been found on the Marble head Peninsula of Ottawa County as long as anyone then alive could remember. Cusick and Burns (1984) noted that the habitat in Ohio closely resembles the Canadian habitat, where the plant is considered indigenous. Allison Cusick (Ohio Department of Natural Resources, pers. comm. April 1986) considers the plant native to the Marble-head Peninsula. Some additional research is needed regarding population genetics of this species.

Federal actions on the Lakeside daisy began with Section 12 of the Endangered Species Act of 1973 (Act), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. *Hymenoxys acaulis* var. *glabra* was included in the July 1, 1975, notice of review. On December 15, 1980 (45 FR 82479), and September 27, 1985 (50 FR 39525), the Service published revised notices of review for native plants in the **Federal Register**; *Hymenoxys acaulis* var. *glabra* was included in those notices as a category 1 species. Category 1 species are those for which data in the Service's possession indicate that proposing to list is warranted.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The deadline for a finding on those species, including *Hymenoxys acaulis* var. *glabra*, was October 13, 1983. In October 1983, 1984, 1985, and 1986, the petition finding was made that listing *Hymenoxys acaulis* var. *glabra* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such petitions are recycled under section 4(b)(3)(c)(i). The August 19, 1987, proposal (52 FR 31048) to determine threatened status for *H. acaulis* var. *glabra*, constituted the final required finding for this species, that the action requested by the petitioner was warranted.

Summary of Comments and Recommendations

In the August 19, 1987, proposed rule (52 FR 31048) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the *Port Clinton News Herald* on September 3, 1987.

Ten comments were received. Seven comments expressed support for the proposal, including the Ohio Department of Natural Resources, the Illinois Department of Conservation, the Royal Botanical Gardens of Canada, and four private parties. The letter from the Royal Botanical Gardens pointed out that a minor construction project, or well intentioned "weed killers" could exterminate the population on the Marblehead Peninsula. One person who submitted a comment believed that the mining (quarrying) activities posed a serious threat to this species. Another person provided additional status, biological, and monitoring information accumulated as a graduate student while working with this species. Another party who has observed *H. acaulis* var. *glabra* for about 40 years, voiced concerns over increased quarrying activities that continue to adversely affect this species. The Ohio Department of Natural Resources advised of recent land acquisition attempts to bring one of the populations on the Marblehead Peninsula under public ownership, but negotiations so far have been unsuccessful. The Illinois Department of Conservation advised that, although extirpated from the State, the plant is on the official endangered species list, which prohibits the sale or offer of sale. The Illinois Department of Conservation now owns the site in Tazewell County, which formerly supported the Lakeside daisy, and believes that with proper management, a reintroduction effort would be in order. Three additional comments were received that offered no new information and did not take a position on the proposal. One of these respondents, a botanist, suggested an additional synonym (*Tetraneuris scaposa* var. *scaposa*) for the taxon, but acknowledged that supporting evidence has not yet been published.

Summary of Factors Affecting the Species

After a thorough review and consideration of information available, the Service has determined that *Hymenoxys acaulis* var. *glabra* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.SC. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hymenoxys acaulis* (Pursh) Parker var. *glabra* (Gray) Parker (Lakeside daisy) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The most serious threat to the Lakeside daisy is habitat destruction. This plant is found in open, dry, rocky, prairie areas where active limestone quarrying occurs. The Marblehead Peninsula population consists of seven scattered sites within a 4 square mile area, all on privately owned land in an area where active limestone quarrying is being conducted now, and has been conducted for 150 years. Quarrying activity has destroyed most of the original prairie habitat. Where quarrying activities are conducted, any existing Lakeside daisy plants are completely destroyed. Once quarrying has ceased on an area, the plant occasionally reappears after a period of 15–20 years but not abundantly (Allison Cusick, Ohio Department of Natural Resources, pers. comm. 1986). Because the quarrying activities have moved from area to area, the "cycle" from destroyed habitat to subsequent reappearance of the plant years later has been continuous for 70–80 years on this small area of the Marblehead Peninsula (Cusick pers. comm. 1986). Cusick points out that while the Lakeside daisy is easily grown when transplanted into gardens, it does not seem to expand its natural range. In addition, the succession of overgrowth by woody species reduces the open sunny habitat necessary for the plant's survival (Cusick and Burns 1984, DeMauro 1987). Cusick and Burns (1984) also noted that overcollecting for gardens is a hazard, because the plant is one of Ohio's more spectacular

wildflowers. DeMauro (pers. comm. 1987) reports that several nurseries in Illinois and Wisconsin provide Lakeside daisy seeds, but does not believe the trade is significant. Populations have been extirpated in Will and Tazewell Counties in Ohio due to quarrying, grazing, and industrial activies (Schwegman, pers. comm. 1986). Since all of the remaining Lakeside daisy plants are found on privately owned land, some form of land protection and management rights are needed in order to protect the existing population and manage the woody overstory. Provisions of the Endangered Species Act of 1973, as amended, will enhance and reinforce protection efforts.

B. *Overutilization for commercial, recreational, scientific, or educational purpose.* Commercial trade of this plant is not known to be extensive. Because it is easily transplanted and has very showy flowers, the possibility for increased commercial trade is present. Several nurseries in Illinois and Wisconsin provide Lakeside daisy seeds, but it does not appear the volume is significant (M. Demauro, pers. comm. 1987).

C. *Disease or predation.* None known.

D. *The inadequacy of existing regulatory mechanisms. Hymenoxys acaulis* var. *glabra* is officially listed as endangered by the States of Ohio and Illinois. Ohio law prohibits commerical taking of any State-listed plant from its native habitat. The law also prohibits the taking of any listed species for any purpose without either the written permission of the landowner, or a collecting permit from the Department of Natural Resources and verbal permission of the landowner. Illinois law protects plants on State lands and prohibits the sale or offer of sale. These prohibitions on trade and collecting do not specifically provide for protection or management of the species habitat. These regulations will be further strengthened by prohibitions of the Endangered Species Act. The Ohio Department of Natural Resources is negotiating with a landowner for the purchase of a site where the Lakeside daisy occurs, but so far these negotiations have been unsuccessful. *Hymenoxys acaulis* var. *glabra* is not protected under the Ontario Endangered Species Law.

E. *Other natural or manmade factors affecting its continued existence.* Results of a reproductive study by DeMauro (1982) indicates, and further substantiates that *Hymenoxys acaulis* var. *glabra* is self-incompatible. This may have been a factor leading to the natural disappearance of one of the last Lakeside daisy populations in Illinois (DeMauro 1982).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to make this rule final. Based upon this evaluation, the preferred action is to list *Hymenoxys acaulis* var. *glabra* as threatened. In the United States only one fragmented population of this species is known to survive. It is on privately owned property and receives no protection or management designed to enhance its likelihood of continued existence. Threatened status is appropriate for the species as a whole, because without protection and further research the present vulnerability of the species to become endangered will continue. For reasons detailed below, it is not considered prudent to designate critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). The Service believes that designation of critical habitat for *Hymenoxys acaulis* var. *glabra* would not be prudent because no benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat description and map.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States. It also requires that recovery actions be carried out for listed species. Such actions are initiated by the Service following the listing. Potential recovery activities include vegetation control of woody overstory and reintroduction into areas of the plant's historic range. The protection required of Federal agencies and prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species, or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Since the Lakeside daisy is not known to grow on Federal lands, little if any Federal involvement is anticipated.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Hymenoxys acaulis* var. *glabra*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued, since this plant is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038 (703/343–4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental

Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Cusick, A.W. and J.F. Burns. 1984. *Hymenoxys acaulis* (Pursh) Parker var. *glabra* (Gray) Parker. 2 pages in R.M. McCance, Jr. and J.F. Burns, eds. Ohio Endangered and Threatened Vascular Plants. Department of Natural Resources, Columbus, Ohio. n.p.

DeMauro, M.M. 1987. A permanent monitoring program for the Lakeside Daisy (*Hymenoxys acaulis*) var. *glabra*) at the Marblehead Quarry, Marblehead, Ottawa County, Ohio. unpubl. rep. 48 pp.

DeMauro, M.M. 1982. Aspects of the reproductive biology of the endangered *H. acaulis* var. *glabra:* Implications for conservation. M.S. Thesis. U. of IL at Chicago, Chicago, IL. 64 pp.

Moseley, E.L. 1930. Some plants that were probably brought to northern Ohio from the west by Indians. Papers of the Mich. Acad. of Sci., Arts, and Letters 13:169–172.

Parker, K.F. 1950. New combinations in *Hymenoxys*. Madrono 10:159.

Weed, C.M. 1890. The Lakeside daisy. Journal Columbus. Horticultural Soc. 5:72–73.

White, D.J. and R.V. Maher. 1983. *Hymenoxys acaulis* (Pursh) Parker var. *glabra* (Gray) Parker. 1 page In: G.W. Argus and D.J. White, Eds. Atlas of the Rare Vascular plants of Ontario. National Museum of Natural Sciences, Ottawa. n.p.

Wunderlin, R.P. 1971. Contributions to an Illinois Flora No. 4. Trans. Illinois Acad. Sci. 64:317–327.

Author

The primary author of this proposed rule is William F. Harrison (see ADDRESSES section) (612/725–3276 or FTS 725–3276).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159; 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetic order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatended plants.

* * * * *

(h) * * *

Species			Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		
Asteraceae—Aster family:							
Hymenoxys acaulis var. *glabra*	Lakeside daisy	U.S.A. (OH,IL) Canada (ON)		T	310	NA	NA
*	*	*	*	*	*		

Dated: June 3, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–14246 Filed 6–22–88; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Arenaria cumberlandensis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Arenaria cumberlandensis* (Cumberland sandwort) to be an endangered species under authority of the Endangered Species Act of 1973 (Act), as amended. This small plant is known from only five sites, one in Kentucky and four in Tennessee. The species is endangered by timber harvesting, trampling by recreational users of its unique habitat, and destruction of its habitat by collectors of Indian artifacts. This action will implement the Federal protection provided by the Act for *Arenaria cumberlandensis*.

EFFECTIVE DATE: June 23, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (telephone 704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

Arenaria cumberlandensis (Cumberland sandwort) was described as a new species by Wofford and Kral (1979). This perennial, herbaceous member of the Pink family (Caryophyllaceae) is 4 to 6 inches (10 to 15 centimeters) tall and has small, white-petaled flowers and relatively long, narrow leaves. It is distinguished from a related species, *Arenaria glabra*, by the presence, at flowering, of basal rosettes of leaves and by its wider and thicker leaves. Additionally, *Arenaria cumberlandensis* flowers in late June and early July, while *Arenaria glabra* flowers in late April and early May (Wofford and Smith 1980).

Arenaria cumberlandensis is known only from a limited portion of the Cumberland Plateau in north-central Tennessee and adjacent Kentucky. It is restricted to shady, moist rockhouse floors, overhanging ledges, and solution pockets in sandstone rock faces. Rockhouses were defined by Wofford (1976) as "cave-like overhangs resulting from differential weathering of sandstone." This species occurs where the correct combination of shade, high moisture, cool temperatures, and high humidity provides appropriate habitat conditions. These habitat requirements are in sharp contrast to those of other members of the genus in the southeastern United States, which are typically found in hot, dry areas in full sun (Wofford and Kral 1979, Wofford and Smith 1980). The five currently known populations of *A. cumberlandensis*, one in Kentucky and four in Tennessee, are described below.

1. *McCreary County, Kentucky.* This small population, which is about 1 mile from the Tennessee State line, is the only known population is the State. It was discovered by Mr. Max Medley during a thorough search of the area for rare plants. The area is managed by the Daniel Boone National Forest. Threats to the site include habitat destruction by collectors of Indian artifacts, hikers, campers, and other recreational users of the area. Timber removal in or adjacent to the habitat supporting the species would also have significant adverse impacts on the population by eliminating the shade, high moisture and humidity, and cool temperatures which *Arenaria cumberlandensis* requires. At the present time no timber harvests are planned near this site (Brian Knowles, Daniel Boone National Forest, personal communication, (1986).

2. *Fentress and Morgan Counties, Tennessee.* This small population is located on privately and publicly owned land on the east and west sides of Clear Fork River. At this point the river forms a part of the boundary between Fentress and Morgan Counties. The Fentress County portion of the population is managed by the National Park Service as a part of the Big South Fork National River and Recreation Area. The Fentress County population segment is under stress because it occurs in an area that is much drier than the habitat in which *A. cumberlandensis* is characteristically found. This was the driest site observed by Wofford and Smith (1980) during their status survey of the species. The privately owned Morgan County part of this population occurs in the shaded, moist habitat more typical of the species. All of the plants are potentially threatened by trampling by hikers, campers, and Indian artifact collectors, and adverse habitat modification by timber harvesting.

3. *Pickett County, Tennessee.* This site, located within Pickett State Park and Forest, is owned by the State of Tennessee and is managed by the Tennessee Department of Conservation, Division of Forestry. The area supports the largest population of *Arenaria cumberlandensis* as well as several excellent examples of the unique rockhouse flora found only on the Cumberland Plateau. Existing threats to the species at this site include hiking, camping, picnicking, rappelling, and other recreational use of the area. A potential threat to the population is any timber removal that is not planned with the conservation of Cumberland sandwort as a primary consideration.

4. *Fentress County, Tennessee.* This very small population contains less than six clumps of plants and is located within the watershed of a municipally owned water supply reservoir. At the present time, the only known threat is this population's small size and its consequent vulnerability to extirpation by natural population level fluctuations (Wofford and Smith 1980).

5. *Scott County, Tennessee.* This small population is within the boundaries of the Big South Fork National River and Recreation Area and is managed by the National Park Service. The population is small, consisting of approximately 50 clumps. The site has been severely impacted by trampling by recreational visitors to the area, by collectors of Indian artifacts, and by trash dumping (Wofford and Smith 1980).

The Service funded a status survey of *A. cumberlandensis* in 1979 and received the final report in October 1980. Based on this report, the species was included in category 1 of a comprehensive plant notice of review in the **Federal Register** of December 15, 1980 (45 FR 82480), and in an updated notice in the **Federal Register** of September 27, 1985 (50 FR 39526). Category 1 comprises those species for which the Service has current information supporting proposed endangered or threatened status.

All plants covered by the comprehensive plant notices, such as *A. cumberlandensis*, are treated as being under petition. Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983; October 12, 1984; and October 11, 1985; the Service found that the petitioned listing of *Arenaria cumberlandensis* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats were still being gathered.

On July 6, 1987, the Service published, in the **Federal Register** (52 FR 25268), a proposal to list *Arenaria cumberlandensis* as an endangered speices. That proposal constituted the final 1-year finding as required by the 1982 Amendments to the Endangered Species Act. The proposal provided information on the species' biology, status, and threats, and the potential implications of listing. The proposal also solicited comments on the status, distribution, and threats to the species.

Summary of Comments and Recommendations

In the July 5, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in late July 1987 in the *Fentress Courier* (Jamestown, Tennessee), *Morgan County News* (Warburg, Tennessee), *Pickett County Press* (Byrdstown, Tennessee), *Independent Herald* (Oneida, Tennessee), and *McCreary County Record* (Whitley City, Kentucky). The Service received 14 comments on the proposed rule. All comments received through October 5, 1987, were considered in developing this final rule and are discussed below.

Of the 14 responses to the proposed rule, four were from Federal agencies, six from State or local agencies, and four from private organizations or individuals. Support for the proposed addition of *Arenaria cumberlandensis* to the Federal list of endangered species was expressed by nine comments. Additional information on the species or on the impacts of the proposed protection of this species on specific agencies or programs was provided in three comments. Two comments were nonsubstantive in nature. No objections to the proposed protection of *Arenaria cumberlandensis* were received.

The Service has incorporated the additional information received on this species into the final rule. The Service concurs with the conclusion reached by nine reviewers that *Arenaria cumberlandensis* merits listing as an endangered species under the Act.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Arenaria cumberlandensis* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to

Arenaria cumberlandensis Wofford and Kral (Cumberland sandwort) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Arenaria cumberlandensis* is endangered directly and indirectly by human activities in and adjacent to its unique habitat. The species is found on the sandy floors of rockhouses, in solution pockets on the face of sandstone cliffs, and on ledges beneath overhanging sandstone. Significant threats to the plants growing on the rockhouse floors include trampling by hikers, campers, picnickers, individuals rappelling down the sandstone cliffs, and "pot hunters" digging within the rockhouses for American Indian artifacts. The plants growing on ledges and in solution pockets on the cliff faces are vulnerable to trampling by those rappelling down the cliffs. Most populations are potentially threatened by timber removal in or adjacent to the sites supporting the species. Increased sunlight on the plants and subsequent alteration of the moisture conditions would probably lead to extirpation of *Arenaria cumberlandensis* from the timbered area.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Arenaria cumberlandensis* is not currently a component of the commercial trade in native plants. Its small size and restrictive habitat requirements should limit future demands resulting from increased publicity of the species to a few wild flower enthusiasts specializing in rare species. Several of the known populations are very small and could be significantly damaged or extirpated by scientific collecting. The adverse impacts of some recreational activities have been addressed in the preceding section.

C. *Disease or predation.* Disease and predation are not known to be factors affecting the continued existence of Cumberland sandwort at this time.

D. *The inadequacy of existing regulatory mechanisms. Arenaria cumberlandensis* is listed as an endangered species on Tennessee's list of endangered, threatened, and rare plant species. The Tennessee Rare Plant Protection and Conservation Act prohibits taking without the permission of the landowner and requires that any commercial activity in the species be authorized by permit. The species is listed as endangered on Kentucky's unofficial list of endangered, threatened, and rare species prepared by a review committee of the Kentucky Academy of Science. No protection is afforded the species by inclusion on this unofficial list. Existing regulatory mechanisms and unofficial recognition given to the species do not provide protection from habitat alteration and destruction which are the primary threats to the continued existence of *Arenaria cumberlandensis.*

E. *Other natural or manmade factors affecting its continued existence. Arenaria cumberlandensis* is an extremely rare species found only within a small portion of the Cumberland Plateau. In some populations, loss of even a few individuals through natural fluctuations in numbers or human-induced habitat alterations could eliminate the population and thereby appreciably reduce the likelihood that the species will continue to exist.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Arenaria cumberlandensis* as an endangered species. Endangered status seems appropriate because of the severity of the threats facing the species throughout its range. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *A. cumberlandensis* at this time. Most populations of this species are very small, and loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from some locations. Collecting, without permits, will be prohibited at the locations under Federal management; however, taking restrictions will be difficult to enforce at these sites and will not be applicable to the other non-federally owned locations. Therefore, publication of critical habitat descriptions and maps would increase the vulnerability of the species without significantly increasing protection. The owners and managers of all the known populations of *Arenaria cumberlandensis* are aware of the plant's location and of the importance of protecting the plant and its habitat. No additional benefits would result from a determination of critical habitat. Therefore, it is not prudent to designate critical habitat for *Arenaria cumberlandensis* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or lised as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Three of the five known populations of *Arenaria cumberlandensis* are partially or completely on privately, municipally, or State-owned land. One small population and part of another population are located on land managed by the National Park Service, while another is on land managed by the U.S. Forest Service. There are no current or planned Federal activities that are anticipated to adversely impact this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to

possession the species from areas under Federal jurisdiction. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits will be sought or issued, since *Arenaria cumberlandensis* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038–7329 (202/343–4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Tennessee Department of Conservation. 1979. Summary Status Report—*Arenaria cumberlandensis.* Unpublished report. 1 p.

Wofford, B.E. 1976. The Taxonomic Status of *Ageratina luciae-brauniae* (Fern.) King and H. Robins. *Phytologia 33(6): 369–370.*

Wofford, B.E., and D.K. Smith. 1980. Status Report on *Arenaria cumberlandensis.* Unpublished report prepared under contract to the Southeast Region, U.S. Fish and Wildlife Service. 22 pp.

Wofford, B.E., and R. Kral. 1979. A new *Arenaria* (Caryophyllaceae) from the Cumberlands of Tennessee. Brittonia 31(2):257–260.

Author

The primary author of this final rule is Mr. Robert R. Currie, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Caryophyllaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Caryophllaceae—Pink family:						
*	*	*	*	*		
Arenaria cumberlandensis	Cumberland sandwort	U.S.A. (KY, TN)	E	311	NA	NA

Dated: June 3, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 88–14247 Filed 6–22–88; 8:45 am]

BILLING CODE 4310–55–M

Reader Aids

Federal Register

Vol. 53, No. 121

Thursday, June 23, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JUNE

19879-20088.....1
20089-20274.....2
20275-20594.....3
20595-20806.....6
20807-21404.....7
21405-21618.....8
21619-21790.....9
21791-21976.....10
21977-22124.....13
22125-22290.....14
22291-22460.....15
22461-22646.....16
22647-23106.....17
23107-23202.....20
23203-23378.....21
23379-23602.....22
23603-23748.....23

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5618 (*See* Proc. 5832).....23199
5829.....22289
5830.....22461
5831.....22463
5832.....23199
5833.....23201
5834.....23377
Executive Orders:
12641.....21975
Administrative Orders:
Presidential Determinations:
No. 88-15 of May 20, 1988.....20595
No. 88-16 of May 20, 1988.....21405
No. 88-18 of June 3, 1988.....21407

5 CFR

307.....20807
316.....20807
752.....21619
1200.....22465
1600.....23379
Proposed Rules:
300.....23123

7 CFR

2.....21977, 22466, 23167
28.....20089
58.....20275
250.....20416, 20597, 22466
272.....22291, 23484
273.....22291, 23484
405.....20278
440.....20279
713.....20280
770.....20280
795.....21409
800.....21791
910.....20599, 21792, 22647
911.....21624, 22125
915.....20599, 21624
916.....22609
918.....21624
923.....21624
925.....22126
944.....20599, 22126
946.....21793
948.....22469
982.....21624
987.....19879
989.....19880
998.....20290, 22470
1033.....21626
1046.....21626
1413.....20280
1421.....20280
1425.....19882, 21964
1470.....20280
2003.....20090
3403.....21966
Proposed Rules:
27.....22178
51.....22497, 22498
68.....20636
271.....23638
273.....23638
319.....22330
401.....20331-20333, 21455
905.....20121
907.....21651
908.....21651
916.....23243
917.....23243
919.....23243
928.....20121
958.....23404
998.....21666
1001.....21825
1002.....21825
1004.....21825
1076.....23405
1106.....22499
1126.....22003, 22499
1230.....21456, 21836
1446.....19923, 21964
1809.....23406
1922.....23406
1930.....21460
1944.....19924
1945.....23406
1980.....22764

8 CFR

100.....23603
235.....23379
245a.....23380
274a.....20086
337.....23603
341.....23603

9 CFR

76.....21979
92.....2030, 21794, 22128
94.....22128
331.....20099
381.....20099

10 CFR

11.....21979
25.....21979
30.....23382
34.....23382
35.....21627
50.....20603, 21981, 23203
71.....23382
73.....23382
625.....20508
Proposed Rules:
2.....20335

50 ..... 19930, 20856
71 ..... 21550, 23484

12 CFR

4 20611
208 20803
210 21983
261 ..... 20812, 23383
265 22129
324 22130
346 21986
563 20611
606 19884
612 22134
620 21986
725 22471
745 22472

Proposed Rules:

225 21462
563c 23244
571 23244
575 21474
576 21474
577 21474
584 21838
611 20637
612 20637
618 ..... 20637, 20647
620 20637
701 22656
704 20122

13 CFR

121 21547

Proposed Rules:

121 20857
124 21482
125 22015

14 CFR

39 ..... 20101, 20825–20830, 21411, 21412, 21628, 21630, 21809, 22647, 23219
71 ..... 20102, 20414, 20832, 20833, 21396, 21811, 22137, 23219–23221, 23603–23606
73 ..... 23221, 23222
91 ..... 20103, 21986, 23356
95 ..... 20264, 23222
97 ..... 21811, 23227
99 21989
135 ..... 20264, 21986

Proposed Rules:

Ch. I 20124, 22331
21 20860
23 20860
39 ..... 20414, 21489, 21669, 22018, 22020, 22181, 22332, 22657, 22659, 23250–23253, 23642, 23643
71 ..... 20864, 22182, 22183, 23255–23257, 23644
73 20125
75 ..... 20126, 22183, 23258
382 23574

15 CFR

370 23228
372 ..... 22474, 23229
374 23607
379 21989
386 ..... 22474, 23228
390 20833
399 21989

Proposed Rules:

801 23124

16 CFR

13 20834
444 19893
500 20834
1501 21964

Proposed Rules:

13 ..... 19930, 20127, 20131, 22022
305 ..... 22022, 22106
1500 20865
1501 20865

17 CFR

249 23383

Proposed Rules:

1 21490
31 22138
146 22660
150 2341
210 21670
230 22661
239 23258
240 ..... 21670, 23645
249 21670
270 ..... 21670, 23258
274 ..... 21670, 23258

18 CFR

161 22139
250 22139
271 21415
284 ..... 20835, 22139
375 21992
381 21992

Proposed Rules:

4 21824
16 21824
141 21853
260 21853
357 21853
420 22501

19 CFR

132 19896
134 20836

Proposed Rules:

134 20869
177 19933

20 CFR

416 23230
654 23346

Proposed Rules:

205 20136
243 22184
262 22184
350 22184
404 ..... 21685, 21687, 23484
416 ..... 21685, 23126

21 CFR

5 22292
172 ..... 20837–20842, 21631, 22293, 22294, 23340
184 20936
186 20936
193 ..... 20307, 23107, 23385–23388
201 21633
510 ..... 20842, 21993, 22297
520 ..... 21993, 23389
522 ..... 20842, 22297, 23340, 23389, 23607
548 20842
555 23389
558 ..... 20842, 22298
561 ..... 20307, 23107, 23385–23388
862 21447
1301 21813

Proposed Rules:

Ch. I 23180
175 20335
176 20335
177 20335
178 20335
355 22430
606 23414
1010 ..... 20137, 23167
1308 21450

22 CFR

94 23608
136 23186

Proposed Rules:

20 21854
9b 23656

23 CFR

650 21637

24 CFR

8 20216
35 20790
200 20790
201 19897
203 19897
234 19897
510 20790
570 20790
882 20790
885 19899
886 20790
941 20790
965 20790
968 20790
3280 23610

Proposed Rules:

208 20649
596 20556

25 CFR

11 21993
13 21993
20 21993
21 21993
23 21993
69 21995
125 21993
151 21993
175 21993
176 21993
177 21993
271 21993

Proposed Rules:

61 20335

26 CFR

1 ..... 20308, 20612–20614, 20718, 22163, 23231, 23611
301 23611
602 ..... 20308, 23611

Proposed Rules:

1 ..... 20337, 20650, 20651, 20719, 21688, 22186, 23658, 23659
301 23659
602 23659

27 CFR

Proposed Rules:

4 2267
5 2267
7 2267

28 CFR

0 2199
20 2361

Proposed Rules:

11 2202
31 2177

29 CFR

452 2323
505 2354
1926 2261
2676 2229

Proposed Rules:

70 2268
1910 ..... 20960, 2169

30 CFR

7 2348
18 2348
701 2176
800 2176
816 2176
817 2176
904 ..... 19903, 2145
925 2247
934 2247
946 2247

Proposed Rules:

Ch. I 2328
7 2350
20 2328
25 2350
75 ..... 22502, 2328
77 2328
701 2352
772 2353
785 2352
815 2353
827 2352
906 2366
916 2149
917 2328
918 2033
931 2341
935 2250
936 1993
942 2353
944 2033

31 CFR

565 ..... 20566, 2362

Proposed Rules:

103 2328

32 CFR

72 2264
114 2084
285 1990
286 2264
391 2264

Proposed Rules:

199 20576–2059
701 2202

33 CFR

3 2181
4 2265
100 ..... 19906, 20319, 2181 21997, 21998, 2248 22486, 22651, 2323

110.....20319, 20617
117.....20320, 23621
160.....21814
165.....21815, 23622

Proposed Rules:
100.....22680
110.....20339, 20652
117.....22506
126.....22118
154.....22118
155.....22118
156.....22118
162.....20339
165.....20339, 20653
173.....21856
174.....21856

34 CFR
350.....23350
360.....23350
562.....21400

Proposed Rules:
642.....23724
670.....22072

36 CFR

Proposed Rules:
327.....21495

37 CFR
1.....23728
5.....23728

Proposed Rules:
10.....20871
201.....20347
202.....21817

38 CFR
1.....22652
3.....23234
13.....20618

Proposed Rules:
19.....20653

39 CFR
111.....21820
3001.....23107

40 CFR
52.....20321, 21638, 22486, 23237, 23623–23628
60.....22172, 23390
147.....21450
180.....19907, 20322, 21451, 21452, 22299, 23390–23394
232.....20764
233.....20764
250.....23546
261.....20103, 21639
271.....20845
300.....23108
303.....23394
372.....23108
761.....21641
795.....22300
796.....21641, 22300
799.....22300

Proposed Rules:
52.....20347, 23416, 23418
60.....20139
80.....21500
81.....20139, 20722, 23127
82.....20718
86.....21500
180.....20872, 23420, 23421
228.....19934
261.....20140, 20350, 22334, 23661
264.....20738
265.....20738
270.....20738, 23342
372.....23128
471.....21774
600.....21500
763.....19945

41 CFR
101–38.....21821

Proposed Rules:
101–41.....19946

42 CFR
400.....21762
405.....22850
431.....20448
435.....20448
440.....20448
442.....20448, 22850
483.....20448
488.....22850

Proposed Rules:
405.....22335, 22506, 22513
411.....22335
412.....22028
417.....21696
435.....19950
440.....19950
441.....19950
482.....22506
489.....22335, 22513
1001.....22513
1003.....22513

43 CFR
1571.....22326
3000.....22814
3100.....22814
3110.....22814
3120.....22814
3130.....22814
3160.....22814
3180.....22814
3200.....22814
3280.....22814
4100.....22325
5150.....22326

Public Land Orders:
6679.....20846
6680.....22488
6681.....22489
6682.....22489
6683.....22326
6684.....22327

Proposed Rules:
4.....23291
11.....20143
426.....21857
3830.....23720
3850.....23720
3860.....23720

44 CFR
61.....23629
64.....19907, 19909, 20846, 22172–22176, 22654
65.....22489, 22491
67.....22492

Proposed Rules:
67.....21705, 22527

45 CFR
302.....21642
303.....21642
1080.....23568
1801.....23239

Proposed Rules:
670.....19964
707.....22534

46 CFR
10.....21822
15.....21822
69.....20619
77.....20623
96.....20623
195.....20623
249.....23112
550.....23632
580.....23632
586.....20847

Proposed Rules:
10.....20654
15.....20654

47 CFR
73.....19912, 19913, 20624–20626, 21645, 21646, 21762, 22495, 22496, 23396–23398, 23632–23634
94.....21453
97.....21822

Proposed Rules:
1.....20146, 22356, 23132
25.....20146
61.....22356
65.....22356
68.....22035
69.....22356
73.....19964–19966, 20658, 20659, 22035, 22036, 22544–22548, 23135, 23422–23428, 23672
74.....21861
94.....23132

48 CFR
204.....20626, 22426
205.....20626, 22426
206.....20626, 22426
209.....20631
219.....20626, 22426
226.....20626, 22426
227.....20632, 22609
235.....20626, 22426
252.....20626, 20631, 20632, 22426, 22609
519.....21823
970.....21646

Proposed Rules:
4.....22105
215.....19966, 21862
252.....19966

49 CFR
1.....23121
30.....19914
566.....20119
1001.....23398
1002.....23398
1035.....20853
1071.....23400
1072.....23400
1104.....20853
1115.....20853

Proposed Rules:
382.....22268
383.....20147
391.....20147
392.....20147
571.....20659, 23673
604.....20660, 23340
1002.....19969

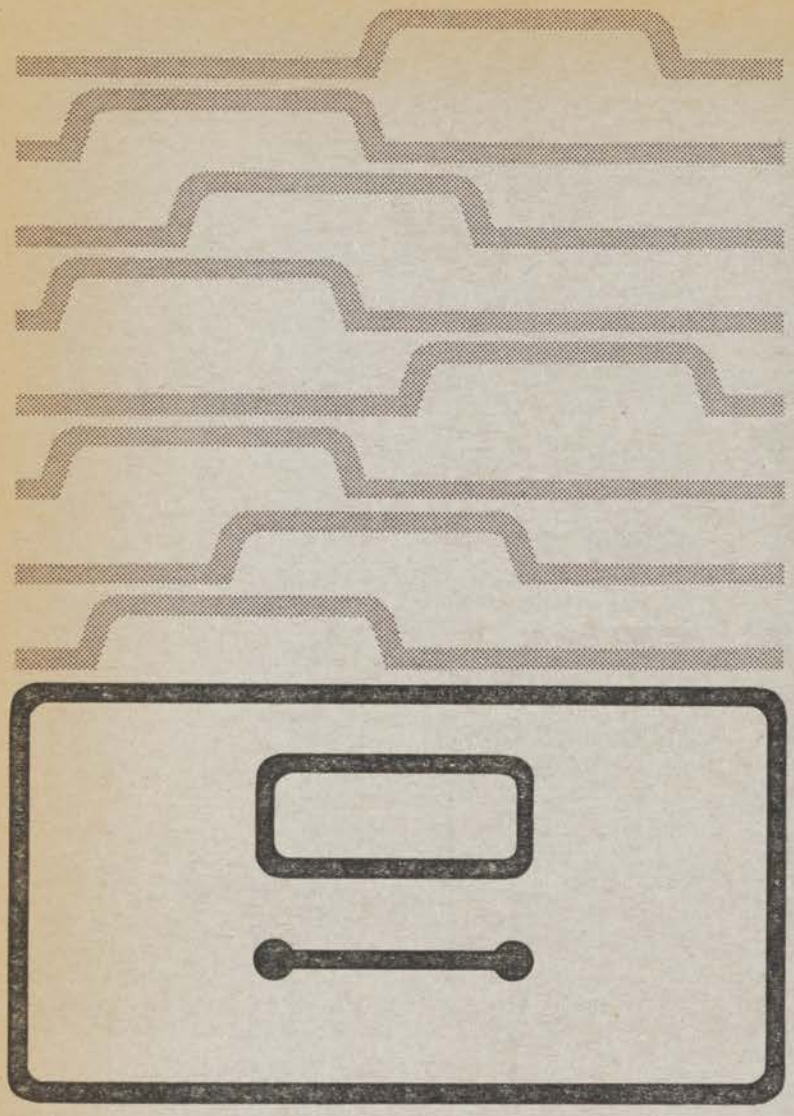
50 CFR
17.....23740–23745
23.....19919
253.....20323, 22609
301.....20327
652.....20854
658.....21999
650.....23634
661.....20119, 22000, 22655
663.....20634, 22001
672.....19921, 21649, 22327, 23401, 23402
675.....21454, 22328, 23402

Proposed Rules:
Ch. VI.....20661
17.....23674
20.....20874
600.....21863
601.....21863
604.....21863
605.....21863
625.....23292
642.....22036
644.....21501
661.....19971
663.....22366

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List June 22, 1988



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1986
SUPPLEMENT: Revised January 1, 1988

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325.

Superintendent of Documents Publication Order Form

Order Processing Code: ***6243**

Charge your order. It's easy! MasterCard VISA

☐ **YES,** please send me the following indicated publications:

_____copies of the 1986 GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR S/N 022-003-01123-4 at $10.00 each.

_____copies of the 1988 SUPPLEMENT TO THE GUIDE, S/N 069-000-00011-8 at $1.50 each.

1. The total cost of my order is $_____ (International customers please add an additional 25%). All prices include regular domestic postage and handling and are good through 8/88. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)_____
(Daytime phone including area code)

3. Please choose method of payment:
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ ***Thank you for your order!***
(Credit card expiration date)

_____
(Signature)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9325